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THE
SOLICITORS' JOURNAL

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CURRENT TOPICS

Judge's Promotion

JUDGE SIR BASIL NIELD, the Recorder and first permanent Judge of the Crown Court at Manchester since its establishment in 1956, has been appointed a Justice of the High Court. Sir Basil was called to the Bar in 1925, took silk in 1945, was Recorder of Salford from 1948 to 1956 and Chancellor of the Diocese of Liverpool for the same period. He succeeds Mr. JUSTICE BYRNE upon his retirement last Wednesday after fifteen years as a High Court judge. We wish Sir Basil success in his new high office and Sir Laurence every happiness in his retirement.

Licensing

THE Licensing Bill, published last week, consists of twenty-six clauses and eight Schedules. Its main objects are proclaimed as being "to make special provision for the granting of justices' licences in respect of restaurants and residential premises; to vary the permitted hours during which intoxicating liquor may be sold or supplied on licensed premises or on club premises; to remove, in respect of certain classes of premises, all restrictions limiting permitted hours for off-sales on weekdays; to allow intoxicating liquor to be sold on Sundays in licensed premises in such counties or county boroughs in Wales and Monmouthshire as shall so elect on a poll held in accordance with the provisions of the Bill; to extend to England and Wales the system of special hours certificates which is at present confined to parts of London; and to provide a new and more effective system for the registration and control of clubs in which intoxicating liquor is supplied." The Bill (in Pt. II) also makes a number of miscellaneous amendments to the licensing law, which include increased penalties for offences in connection with the supply of intoxicating liquor to persons under the age of eighteen, and for certain other offences. No revolutionary changes in the system of general licensing hours are being introduced but merely certain amendments of detail.

Marriage by Repute

LAST week the Court of Appeal upheld a decision of DANCKWERTS, J., that a couple who had enjoyed the reputation of married status should be presumed to have been married despite the absence of a marriage certificate or any other written record (*Re Taylor, deceased* (1960), *The Times*, 10th November). The case had arisen from the intestacy of a horse dealer, Mr. John Taylor, who died in December, 1955. The deceased had associated with a lady of Romany extraction known as "Isenda," as a result of which

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children had been born in 1904, 1908, 1909 and 1911. In June, 1913, Isenda died. One year later Mr. Taylor married and from this marriage undoubted legitimate children were born who were the administrators of his estate and the appellants in the case. The respondent was the youngest of the children of the intestate and Isenda. The question at issue was whether the late Mr. Taylor and Isenda were ever married. The MASTER OF THE ROLLS reviewed the authorities and approved the law as expressed by Kekewich, J., in *Re Shepherd* [1904] 1 Ch. 456, at p. 463: "Where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage." Lord Evershed was impressed with evidence that the intestate and Isenda had been accepted as man and wife while living in a small community at Harefield between 1908 and 1913. On the birth certificates of their children Isenda had been described as the wife of John Taylor, and when he remarried in 1914 Taylor was described as a "widower." The administrators submitted that their family never recognised Isenda as having been married to Taylor. In considering how far the administrators had discharged the onus of proof that rested on them, his lordship was satisfied that the inference of the judge was not a wrong one, and accordingly his decision that the respondent was entitled to share in the residuary estate of the intestate was upheld.

No Offer for Sale

IN the well known case of *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists (Southern), Ltd.* [1952] 2 Q.B. 795; affirmed [1953] 1 Q.B. 401, it was firmly established "that the mere exposure of goods for sale by a shopkeeper indicates to the public that he is willing to treat but does not amount to an offer to sell" (per LORD GODDARD, C.J.). *Fisher* v. *Bell* (1960), *The Times*, 11th November, provides further evidence that this rule is of more than academic interest and importance. Section 1 (1) of the Restriction of Offensive Weapons Act, 1959, provides: "Any person who manufactures, sells or hires or offers for sale or hire, or lends or gives to any other person (*a*) any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a 'flick knife' or 'flick gun' . . . shall be guilty of an offence . . ." and in *Fisher* v. *Bell*, *supra*, the Divisional Court was asked to decide whether a shopkeeper was guilty of this offence. It seems that one of these knives was displayed in the shop window and that behind the knife was a ticket with the words "Ejector knife, 4s." The sole question before the court was whether that knife in the shop window with the ticket behind it constituted an offer for sale within the meaning of s. 1 of the Act of 1959. LORD PARKER, C.J., said that it was clear that according to the ordinary law of contract the display of an article with the price upon it in a shop window was merely an invitation to treat, not an offer for sale, the acceptance of which constituted a contract. In view of this, and the fact that in many statutes and orders which prohibited selling and offering goods for sale the words "offering and exposing for sale" had been inserted, his lordship was "reluctantly driven to the conclusion that no offence was here committed." Perhaps Parliament had not intended to omit the words "exposing for sale" which would have covered the display of "flick knives" in shop windows, but it was not for the court to supply the omission.

Identifying the Driver

UNTIL recently, s. 113 (3) of the Road Traffic Act, 1930, enabled a chief officer of police to require the owner of a vehicle to disclose the identity of a person who was driving his vehicle at the time at which an offence under that Act was alleged to have been committed, and s. 12 (3) of the Road Transport Lighting Act, 1957, extended this power to offences under that Act. However, these provisions were repealed by the Road Traffic Act, 1960, and they have been replaced by s. 232 of that Act. This section applies, *inter alia*, to any offence under the Road Transport Lighting Act, 1957, and to other offences against any other enactment relating to the use of vehicles on roads (subs. (1)). Where the driver of a vehicle is alleged to be guilty of an offence to which s. 232 of the Act of 1960 applies, the owner of the vehicle must give such information as to the identity of the driver as he may be required to give by or on behalf of a chief officer of police, and any other person must, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver (subs. (2)). A person who fails to comply with such a request "shall be guilty of an offence unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle . . . was" (subs. (3)). It seems that this section was applied in a recent case in the Nottingham Shire Hall Magistrates' Court where a person was fined £5 for failing to identify the driver of his car. The vehicle was parked near a public house without lights and the owner of the vehicle withheld the driver's name because he did not want to get him into trouble. Where police require the owner of a vehicle to identify a driver, they are not bound to specify to the owner the nature of the offence which he (the driver) is alleged to have committed as the statute "only requires the police to allege that an offence under the Road Traffic Act has been committed by a driver. Once they allege that, they are entitled to ask anybody who they think can give them information to tell them who the driver was" (per LORD GODDARD, C.J., in *Pulton* v. *Leader* [1949] 2 All E.R. 747). We assume that these words would also apply to a request for information made under s. 232 of the Road Traffic Act, 1960.

Lifebuoys on Ships

IN a recent case at Plymouth the owners of a converted lifeboat were fined £50 and ordered to pay twenty guineas costs for failing to equip the vessel with two lifebelts. The relevant safety provisions are now contained in the Merchant Shipping (Life-Saving Appliances) Rules, 1958, which were made by the Minister of Transport and Civil Aviation in exercise of his powers under s. 427 of the Merchant Shipping Act, 1894, as substituted by s. 2 of the Merchant Shipping (Safety Conventions) Act, 1949. The vessels to which these rules apply are divided into several classes and it would seem that the ship in question, which was being used as a ferry, fell within Class IX (A), which comprises: "Tugs, tenders, launches, lighters, dredgers, barges, and hoppers which do not proceed to sea." Every ship which comes within this class must carry two lifebuoys (r. 16 (4)) and one lifejacket for each person on board (r. 16 (5)) and the lifebuoys must comply with the provisions of Sched. X to the rules (r. 28). The vessel in question was used to ferry men across a river and for this reason it could be said that it did not "proceed to sea," a finding which is supported by *Salt Union, Ltd.* v. *Wood* [1893] 1 Q.B. 370.

HIRE-PURCHASE AGREEMENTS AND DAMAGES

THE decision of the Court of Appeal in *Lowe* v. *Lombank, Ltd.* [1960] 1 W.L.R. 196; p. 210, *ante*, answered a number of important questions about hire-purchase agreements which finance companies have no doubt been anxiously mulling over. Another point of no less significance was left unanswered, and was apparently not raised either in the Court of Appeal or in the court below. It is this: assuming that there has been a breach of warranty by the owner, on what basis will damages be assessed against him?

To set the question in its proper perspective, let us recall briefly the salient facts in the *Lowe* case. Mrs. Lowe entered into a hire-purchase agreement with the defendant company for the hire of a second-hand car. After delivery of the car to her it was found to be quite unroadworthy, and after spending some money trying to repair it the plaintiff eventually started proceedings against the defendants claiming rescission and return of moneys paid or, in the alternative, damages for breach of an implied condition of fitness.

The learned county court judge held that it was too late for her to claim rescission, and that she was estopped by a receipt which she had signed from complaining of the condition of the car. In case he was wrong, he assessed damages at £160. The Court of Appeal, in a unanimous judgment delivered by Diplock, J., reversed his decision and awarded damages in the amount assessed by the lower court. As we have already indicated, the question of the quantum of damages was not in issue.

Although the report does not state how the sum of £160 was arrived at, Mrs. Lowe's solicitor has kindly informed the writer that this was the amount which had been inserted in the particulars of claim as being necessary to put the car into a reasonable condition. The original balance "owing" under the hire-purchase agreement, after allowing for a car traded in (valued at £45) and a down-payment of £50, was £158 8s. 0d. It will be seen therefore that the damages awarded slightly exceeded this figure.

If this had been the case of the straightforward sale of a car, there would have been no difficulty about the method of computing the damages. Section 53 (2) of the Sale of Goods Act, 1893, enacted the common-law rule that it is the estimated loss directly and naturally resulting in the ordinary course of events. This, however, was not a sale; it was a hire-purchase agreement, and the question therefore arises what *is* the loss which a hirer sustains under these circumstances? Before attempting to answer this question, let us recall the cardinal rule of the law of damages that the plaintiff is entitled to compensation for his loss, and no more.

Damages prima facie

Now in the case of the sale of a defective car, the buyer being, *ex hypothesi*, obliged to pay the price, his damages, prima facie, would be the difference between the value of the vehicle as it should have been and what it is in fact. (This will not necessarily be the same as the cost of repairing the car. Apart from the fact that repairs may not be possible, their cost may exceed the difference in value, and in that event it is submitted that the buyer is only entitled to the lower figure: cf. *British Westinghouse, etc., Co.* v. *Underground, etc., Co. of London, Ltd.* [1912] A.C. 673, per Viscount Haldane, at p. 689.) If, on the other hand, we take a simple agreement for the hire of a car for a definite period it is quite obvious that the hirer's damages will be neither the difference in value nor the cost of repairing the car. Not the first because the hirer is not buying the car, nor the second because he is under no obligation to repair (*Sutton* v. *Temple* (1843), 12 M. & W. 52, at p. 60.) Indeed, if he does gratuitously repair, he may find himself unable to recover his expenses: Story on Bailments, s. 392. His measure of damages, therefore (ignoring consequential damages and any damages recoverable under the second rule in *Hadley* v. *Baxendale* (1854), 9 Ex. 341), might be either the reduced value of the use of the car or, where the vehicle was completely useless, the extra cost of hiring another one elsewhere.

It will thus be seen that the hirer under a hire-purchase agreement falls between these two stools. On the one hand, he is not obliged to purchase and is at liberty to terminate the agreement at any time. In this respect he resembles the ordinary hirer. On the other hand, it is conceivable (and perhaps very likely) that he will pay the full outstanding balance, thereupon, but not before, becoming a buyer. In the *Lowe* case it appears to have been assumed that Mrs. Lowe was in the same position as a buyer, but this assumption, as a matter of law, is difficult to justify. It could indeed lead to some strange situations. Suppose, immediately after recovering her judgment for £160, Mrs. Lowe had purported to terminate the hire-purchase agreement. Would the defendants have been able to resist the move? Surely not. In her case she might not have stood to gain much by this manœuvre, although in view of *Lamdon Trust, Ltd.* v. *Hurrell* [1955] 1 W.L.R. 391, minimum hiring clauses are no longer the great deterrent they once were. Consider, however, the following example. *H* enters into a hire-purchase agreement for a car. The total price, including finance charges, is £600. The minimum hiring charge is £300. *H* sues for breach of warranty and on the strength of the *Lowe* formula recovers £400 damages. He thereupon terminates the agreement. Even allowing for the full amount payable under the minimum hiring clause, he will still be in pocket by £100, assuming he makes no attempt to repair the car. He has therefore received more than just compensation.

Assume, again, that the owner terminates the hire-purchase agreement because of breach of a condition, or that the hirer himself ends it and then brings action for breach of warranty. Would his damages in that case still be computed on the assumption that he was a buyer? Presumably not. On the other hand, the applicable test ought not to depend on the fortuitous circumstance whether the agreement has been terminated before action or afterwards. We must conclude, then, that the *Lowe* formula is not the right one.

Alternative methods of computation

To state the problem, however, is easier than to solve it. The following alternative methods of computing the damages suggest themselves:—

(1) The agreement is treated as an ordinary hiring contract. This method is unworkable for several reasons. First, both parties may wish to continue with the agreement. Second, the loss suffered by the hirer is greater than the mere loss of use or diminished use, or the cost of renting another car. The "rentals" he has paid really comprise a substantial part of the purchase price of the vehicle. On the other hand, it might be unfair to oblige the owner to refund the payments made by the hirer, less a reasonable

amount representing the true hiring charge, because the breach of warranty may be slight and hirers would be encouraged to avoid their agreements in this manner by looking for minor faults.

(2) The court obliges the hirer, then and there, to elect whether he will exercise his option to purchase or not. This formula has the merit of preventing unjust enrichment of the hirer, but it has the fatal drawback that it involves re-writing the agreement for the parties, and this the courts will not do: see *British Movietonews, Ltd.* v. *London and District Cinemas, Ltd.* [1952] A.C. 166. Moreover, for the duration of the revised agreement the owner's security would be endangered because of the provisions of s. 25 (2) of the Sale of Goods Act. Could the court make an order that the section was not to apply?

(3) Damages could be computed as if the hirer were a buyer, but a proviso would be inserted in the judgment that if the hire-purchase agreement was terminated before the hirer exercised his option the owner could apply to the court for a re-assessment of the damages. The objection here would be that such a procedure runs counter to the basic principle that damages can only be computed once.

(4) The court could suspend the computation of damages until it was known whether the hirer had exercised his option or not. Apart from the fact that this solution also offends settled rules of procedure, it could also be unfair to the hirer since he might be required to wait two years or more to recover damages on a car that in the meantime might be of little use to him.

(5) The breach of warranty being proven, the court could require the owner to put the car into good condition. This solution also involves an innovation in the law of damages, but it has a more serious drawback inasmuch as the defect may be incapable of repair. To take just one example, the car may be described as capable of speeds up to 80 m.p.h.; it may in fact reach no more than 50 m.p.h.

(6) Finally, the court could compute damages on the buyer principle but require the amount to be set off against the balance remaining unpaid under the hire-purchase agreement, with only the excess (if any) being paid to the hirer in cash. Thus the hirer could gain no unfair advantage by terminating the agreement before the full price had been paid; on the other hand, his right to terminate would remain intact. It will be noticed, however, that this solution involves the fictitious assumption that the hirer was indebted for the full price of the car at the time of the action.

Other possible solutions will no doubt suggest themselves to the reader. One fact does appear to be reasonably clear, and that is that none of them fits within the framework of the existing principles for computing damages and that some adjustment of those principles seems inevitable if justice is to be done. Hire-purchase agreements, however, raise some novel problems, in the field of the law of damages as in others, and as Goddard, J. (as he then was), reminded us in *Karflex Ltd.* v. *Poole* [1933] 2 K.B. 251 (at p. 264), "the law has to be moulded and developed to meet the commercial developments which are taking place."

The impact of statutory and contractual provisions

We have so far considered the position apart from the provisions of the Hire-Purchase Act, 1938, and any special clauses which the contract of hire-purchase may itself contain. Dealing first with the former, two sections in the Act may be thought capable of affecting the computation of damages, ss. 8 and 12. It might be argued that since the former section appears to have borrowed from the language of the Sale of Goods Act therefore the hirer is to be treated as a buyer for all purposes. Without attempting to analyse the section in any detail, it must suffice to say that, first, the borrowing is only partial and the differences are as significant as the similarities. Thus, to take but one example, s. 8 (2) provides that, where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose. Section 14 (1) of the Sale of Goods Act, on the other hand, only applies *where the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply*. Section 8 (2) is in fact a blend of the common-law rules applicable to the implied condition of fitness in contracts of sale and in the hiring of goods respectively. In the second place, it is submitted that even if the assimilation were complete it would not follow that damages must also be computed on the buyer principle. The nature of the conditions and warranties to be implied in hire-purchase agreements are one thing; the method of computing damages flowing from a breach of them another. Section 8 deals only with the former question, and nothing in the history of the 1938 legislation leads us to the belief that Parliament intended to go any further than this.

Rather more interesting, in this context, are the provisions of s. 12 (7). Section 12, it will be recalled, deals with actions brought by owners for the recovery of their goods. Subsection (7) provides that "where damages have been awarded against the owner in the proceedings, the court may treat the hirer as having paid in respect of the hire-purchase price, in addition to the actual amount paid, the amount of the damages, or such part thereof as the court thinks fit, and thereupon the damages shall accordingly be remitted either in whole or in part." The wording is not entirely free of ambiguity, nor does the subsection offer any guidance as to the basis on which such damages are to be computed. What is material is the thought that a court may now feel less hesitant in applying the buyer principle in view of the statutory power conferred on it by the subsection to set off the damages awarded against the hire-purchase price. In other words, there is now statutory warrant for suggestion No. 6 above.

Finally, the terms of the contract themselves may also affect the question of damages. We are not aware of any existing clauses expressly dealing with it (and, *quære*, to what extent they might be held to be repugnant to s. 8 of the Act), but it has been suggested that the customary repairs clause may have some bearing upon the matter. A typical clause, for example, will oblige the hirer "to keep" or "to maintain" the goods "in good repair and thorough running order and condition." Such a clause or, for that matter, any other repairs clause, does not so far appear to have come before the courts for interpretation. Whether, therefore, it will receive the same construction as similar clauses in leases of realty is still an open question, although, in view of the obvious difference in subject-matter, it is to be hoped that there will be no mechanical transfer of the canons of construction from one sphere to the other. Let us presume the worst, however, and assume that no distinction will be drawn. It will then be argued that where the hire-purchase agreement requires the hirer "to keep" or "to maintain" (we treat the words as synonymous) the goods in good repair, this

includes the duty to put the goods into a serviceable state, even where they were in a chronic state of disrepair at the time of original delivery to the hirer: see *Payne* v. *Haine* (1847), 153 E.R. 1304, and especially Parke, B.'s judgment at p. 1306; Halsbury's Laws of England, 3rd ed., vol. 23, p. 580. What is the position where the owner is under an implied duty, as he is both at common law and under s. 8 of the 1938 Act, to supply goods of reasonable fitness? Will the repairs clause still be construed as before? In that event, a hirer suing for damages may well be able to claim as part of his damages the cost of repairs which would not have been necessary, and for which he would not have been liable, if the owner had observed his bargain. It is submitted that this would be putting an unnatural construction on the clause. The parties could not have intended—in so far as they gave any thought to the question at all—that the hirer should be under a duty to do that which the owner should have done in the first instance. Moreover, how such a construction could be reconciled with the hirer's right to avoid the contract for breach of the implied condition of fitness is not clear.

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John Mackrell Prizemen Series

THE SOLICITOR AND THE BUSINESS MAN

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The solicitor doing so would ask himself, "What do others think of us? How well do we fit into the pattern of society in 1960?"

The affluent society of to-day has brought material prosperity to far more people than ever before. The ownership of property, in its broadest sense, is more widely spread, wages and salaries are higher, more people are buying their own homes and the ranks of the small investor are ever growing.

For the solicitor this brings two results: first, his status is, by comparison, less exalted than it was fifty years ago, and, secondly, there is a much larger section of the community needing his help and advice. The profession has been alive to this and much has been and is being done to make the profession more accessible to the public. There has been the milestone of the Legal Aid and Advice Scheme itself and also the efforts of The Law Society in fostering the scheme and making it generally known that legal services are available where necessary at a price within the reach of all. Much more remains to be done to enhance the relationship between the profession and the public in general, but the object of this article is to examine the relationship with one section of the public, namely, the business community.

Business men's views on solicitors

During the past decade there has been a great upsurge of commerce and business so that now private enterprise is thriving and has found a new prosperity. The "business man," represented as he is from vast international combines to the local corner shop, forms a large and important sector of society.

What does the average member of the business community think of the legal profession? The larger concerns and many of the smaller ones are, of course, very mindful of their need for legal advice and representation and are well served by their consultants, or in some cases by their own legal staff. There is, nevertheless, a vast number falling outside this category. Many business men appear reluctant to consult a solicitor; if one asks why, one might receive the reply: "Because, although I realise solicitors know all about the law, they are, by and large, academic and I want practical help which is not really within their sphere," or, worse, "Because I am frightened of what it will cost me."

A not uncommon attitude is to believe that if at all possible one must avoid solicitors unless overtaken by some unforeseen misfortune. Many will say they never have occasion to consult a solicitor except to "turn over" a house, a process which they may even consider a social evil—solicitors having cornered the market. At the root of this attitude is probably the feeling that legal work is non-productive and that litigation is costly and dilatory. Whereas there is truth in this, what is not realised is that a solicitor's timely help can often prevent the development of the undesirable situation which brings loss of time and money.

Absence of confidential relationship

What is missing is that confidential relationship between the business man and the solicitor of his choosing which could be of great benefit to him. A relationship such as this almost always exists between the business man and his accountant and, because the accountant knows the fullest details of his client's financial affairs, great confidence is reposed in him. This leads to a full and frank relationship between the two but there is often a great reluctance on the part of the business man to confide similarly in a solicitor who is advising him. Lack of knowledge of the functions of a solicitor is the basic problem and this lack of knowledge is not confined to the business man. Often enough his house will be conveyed by the solicitor "who is acting on the other side" or by one who is suggested by the estate agent as someone who has to be employed to complete "the legal formalities." His bank manager will point out the well-advertised advantages of appointing the bank his executor and may perhaps arrange for his will to be drawn by the solicitors to the bank's trustee department. His accountant may advise him that, as his profits now bring his income well into the surtax range, he should form a private limited company to take over his business, employ his wife and avoid paying surtax on the top margin of his profits which he ploughs back into the business. The accountant may advise him to consult a solicitor to co-operate in the company formation, but more likely he will offer to deal with the matter himself through one of the company agencies in London and the larger cities: any legal documents will be drawn at second hand by someone whom he does not know.

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These are common cases and one can hardly blame the business man for wondering whether solicitors are really necessary at all.

Solicitor's selling points

In all these instances there is no opportunity for the business man to get to know a solicitor to whom he can turn for advice. He does not have the chance to know what services the solicitor can offer and yet the solicitor, of all professional men, is probably in the best position to give general advice and to take a more balanced view of the client's affairs as a whole.

In the first place most actions of importance carry legal consequences and a solicitor, by reason of his training, can see not only the intended result which motivates a certain course of action but also other legal consequences which may ensue and are not so evident to someone unskilled in the law.

Secondly, a solicitor in the normal course of his everyday duties has close contact with most other professional people: estate agents in the course of the buying and selling of land and buildings; surveyors whom he instructs to inspect buildings, survey land and advise technically; stockbrokers in connection with valuations of and transactions in investments held in estates and settlements; accountants in connection with accounts and income and profits tax questions; architects in building disputes; engineers in factory and road accident cases; local authorities on planning and other matters; the banks, the police, insurance companies, building societies and many others

Furthermore, the solicitor is usually the person to whom the other professions turn as a last resort. If all does not run smoothly the legal rights and obligations of parties eventually arise and advice is sought, whether the dispute be with the next-door neighbour or H.M. Inspector of Taxes. Then a solicitor is consulted but he is frequently at a disadvantage because he is so often expected to clear up difficulties which could have been avoided if he had been consulted in the first place.

Finally, although solicitors are sometimes criticised for taking a narrow and legalistic view, is this really true? Does not the solicitor really take a broader view? He looks on a situation in the light of his knowledge and experience of so many aspects of human life.

Tax implications

To take but one example: to-day he is very well aware of the tax implications affecting the business man but he can put that problem in its right perspective. It is small comfort to avoid some income tax if death duties may ruin a business: a widow will not thank her husband if his estate duty avoidance schemes have left her insufficient to live on: the business man will not be pleased if the untimely intestacy of a son and remarriage of a daughter-in-law takes a large measure of control of his business outside his family, nor if the non-observance of what he thought were "legal formalities" causes a transaction at a later date to be declared void.

Perhaps any well-trained estate agent knows more about the detailed law relating to fixtures and fittings than do most solicitors, as do accountants about income tax and bankers about bills of exchange, but is it not a fair assessment that the solicitor's training and experience is such that he can give general advice better than anyone else and knows when his client should bring in other experts to advise on the specialised aspects? No good solicitor will try to advise on matters outside his province, but he ought to know exactly what type of expert can best help his client with any particular problem.

Solicitor as general adviser

The proposition is that the business man would be well served by appointing a solicitor, whom he trusts and has confidence in, as his solicitor and general adviser. A solicitor who is conversant with all the affairs of his client is in a far better position to advise and act in his best interests than one who is consulted on an individual point. There is more than one way of dealing with most transactions, but which is the better way can only be determined in the light of all the surrounding circumstances.

Every business man expects to employ an accountant to guide him on the financial and fiscal matters affecting his business. Why should he not also have the benefit of a solicitor to guide him on all the legal matters which affect not only his business but also his private life and the factors which connect the two? He would find that the retainer he paid his solicitor would compare very favourably with the wage of his errand boy, and he could undoubtedly benefit by a service of this nature.

If such a service is desirable how can it be brought about? Two things are required: first, the reluctance to consult solicitors must be overcome, and secondly, the profession must make known the availability and scope of its services.

Publicity required

Both these matters can only be dealt with by publicity. Two means of approach present themselves: the first is directly to the public. This is not easy because the profession has an inbred reluctance to take any step which might give the appearance that it is touting for business. Against this must be weighed the fact that this discreet reluctance is not universally shared and there is some danger of functions rightly within the particular province of solicitors being lost to others. The Law Society has recently altered its policy in this respect and an advertisement giving information to the public has appeared in at least one widely read periodical and was commented on in these columns at pp. 373 and 425, *ante*. This method of direct approach, however, is likely to prove a long and not inexpensive process.

The second means of approach is to other professional people who already give to the business man the type of service envisaged, particularly accountants and bankers. The functions of the various professions are quite clear and distinct, and if bankers and accountants believed that their customers and clients in business would substantially benefit from the retention of the services of a regular solicitor, as well as their own services, their recommendation would probably be the quickest and most effective means of bringing to the notice of the business man the services available.

Clearly the latter approach could only be made by The Law Society, but might it not be possible for consultations to take place between The Law Society on the one hand and the banks and the governing bodies of the accountancy profession on the other, to see whether those bodies felt that suggestions on the lines set out might prove to be of value to all parties concerned? How the business man would benefit has already been shown. The other professional advisers would benefit in knowing that a watch was being kept on the client's affairs from the legal aspect and in knowing that their own responsibilities were being shared.

From the solicitor's point of view, he would benefit first from an increase in business, secondly, and most importantly, from being placed in a position to give very much better service, and thirdly, from the enhanced status in the community which would surely follow.

T. J. ARKWRIGHT.

County Court Letter

WHEN A BULLOCK IS NOT

It is said that an Irishman who has his hat knocked off in a crowd will immediately reply by knocking off the hat of everyone within reach. Such wholesale retaliation may well lead to further pleasantries of a kind not unknown to any good Irishman, so that in the long run the final count of bloody noses and blackened eyes, including, no doubt, those of the Irishman himself, will be out of all proportion to the original insult. But how else, he will argue, can he be sure that the original offender is punished?

It happens from time to time that a litigant is placed in the similar position of not knowing exactly whom to sue, and he is then often obliged to join more than one person as defendant and ask the court to decide which of his adversaries is liable. Assuming that he has cast his net wide enough to include the culprit, it follows that the court will then usually give judgment against him and make what has become known as a "Bullock" order by means of which the unsuccessful defendant is made to pay the costs of the successful one as well as those of the plaintiff.

In a recent case which started in Bloomsbury County Court and went to the Court of Appeal some interesting and not too well known features of this legal beast were examined, and in the process one or two minor mysteries were suggested.

The facts of this case, *Mayer* v. *Harte* [1960] 1 W.L.R. 770; p. 603, *ante*, were as follows. The plaintiff and the first defendant owned adjoining houses. The first defendant employed the second defendant to do some work on the roof of his house and the latter in turn employed the third defendant as sub-contractor. He did damage to the roof of the plaintiff's house amounting to £20 10s., the actual act which caused the damage apparently having been at least assented to by the first defendant.

The plaintiff sued the first defendant and then joined the second, who paid £15 into court with a denial of liability. At some subsequent date the fact that the work had been done and the damage caused by the third defendant became known to the plaintiff, and after a considerable delay she also joined him. He turned out to be an undischarged bankrupt.

What sort of bullock?

His Honour Judge Potter, who heard the case, gave judgment for the first and second defendants against the plaintiff and for the plaintiff against the third defendant and said that he would make a Bullock order in respect of the costs. Whereupon counsel pointed out that there were two forms of order commonly known as Bullock orders. The first, and properly so-called, one was that made in *Bullock* v. *London General Omnibus Co.* [1907] 1 K.B. 264, and gave the successful defendant his costs as against the plaintiff but allowed the latter to recover them against the unsuccessful defendant. The second, which counsel said should more properly be called a Sanderson order, after *Sanderson* v. *Blyth Theatre Co.* [1903] 2 K.B. 533, provided for the payment of costs direct to the successful defendant by the unsuccessful one.

In this particular case the result would be different according to which form of order was made. As the unsuccessful defendant was insolvent, if a Bullock order was made the plaintiff would in fact have to pay the whole costs of the action except those of the unsuccessful defendant. If a Sanderson order was made, she and the two successful defendants would each have to pay their own. After obviously hesitating more than somewhat, the learned judge made a true Bullock order.

The Court of Appeal dismissed the ensuing appeal, holding that the trial judge had a discretion as to which form of order he should make, and there was nothing to indicate that he had not exercised it judicially, taking into consideration all the relevant facts, including the insolvency of the third defendant. Even if it had had to decide the matter *de novo*, it seems that it would still have made the same order. A factor that apparently bore heavily on the minds of their lordships was that the plaintiff had had plenty of opportunity of discovering the insolvency of the third defendant before joining him as a party, and since £15 had been paid in, she had nevertheless chosen to fight a four-party action over £5 10s. The implication was that they thought that she had stuck her neck out, though they did not say it quite like that.

Minor mysteries

The judgments are lengthy and intriguing, particularly as they introduce some niggling little puzzles without solving all of them. The fact that what they, too, referred to as the Sanderson type of order was only applicable to Queen's Bench cases since the Judicature Act, 1873, whereas it had always been used in Chancery cases, is in itself interesting. The fusion of Law and Equity apparently made it possible for the first time for costs to be awarded between two parties on the same side. But why is it called a Sanderson order at all? In fact, the order made in that case was a proper Bullock one, since it was a High Court jury action and R.S.C., Ord. 65, r. 1, said that in such actions costs must normally follow the event. Incidentally, there seems to be no similar provision in the new Ord. 65. The case that really established the form of the Sanderson order appears to be *Rudow* v. *Great Britain Mutual Life Assurance Society* (1881), 17 Ch.D. 600, but this was, of course, a Chancery case. What the Sanderson case did, in fact, was to suggest that a Rudow order could be made in the Queen's (then King's) Bench Division.

Another minor mystery is that the notes in the Annual Practice under Ord. 65, r. 1, under the heading "Co-defendants," state that, where the plaintiff is insolvent, a Rudow type of order should be made. In that action, however, as in *Mayer* v. *Harte*, it was in fact the unsuccessful defendant who was insolvent. Was this a case of writing "plaintiff" for "defendant" by mistake?

A final minor mystery which will be a matter of astonishment to those of us who are in the habit of considering that the County Court Practice, like Cæsar's wife, can do no wrong, appears in the note in that masterpiece on the Bullock order. Perhaps not surprisingly, it refers to a Sanderson order as a Bullock one—the loose description seems to have been general—but it is very strange to find in line 8 a misprint—"used" instead of "sued." It is even odder to discover that it has appeared in every edition for more than ten years. Does no one read that bit of the Green Book?

Mayer v. *Harte* may or may not have a moral. It could possibly be: always employ insolvent sub-contractors. Alternatively, it might be: if you are thinking of going tort-feasing, be careful to go bust first. You can then with some impunity do as much indiscriminate damage as a bull in a china shop. Or ought one to say a Bullock on the roof?

J. K. H.

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THYSSEN SHARES AND THE DEPOSITUM IRREGULARE

THE quotation recently granted by the London Stock Exchange for DM. 310,000,000 nominal of shares in the German company, August Thyssen-Huette A.G., marks not only one of the first quotations granted for the securities of a foreign company since the war, but also the introduction of a method of issuing those shares to the investing public which is familiar on the Continent but comparatively unknown here. The Thyssen shares comprised in the scheme will be in bearer form and in denominations of DM. 100, 1,000 and 3,000. They will be deposited with Westminster Bank, Ltd., which will issue deposit certificates to bearer in denominations of DM. 10 to represent them, and investors holding such certificates will at any time be able to call for Thyssen shares on surrendering deposit certificates of an equivalent nominal value. The legal relationship between Westminster Bank, Ltd., and the holders of deposit certificates is clearly not that of trustee and beneficiaries. Clause 15 of the deed of covenant between the Thyssen company and the bank under which the deposit certificates are to be issued makes this clear. Nor is the relationship strictly one of bailment as English lawyers understand the term. It appears instead to be that created by the *depositum irregulare* of Roman law under which a bailee of chattels is empowered to mix them with chattels of the same kind, and is merely obliged on the termination of the bailment to return similar chattels of identical value, but not necessarily those originally deposited with him.

Before examining the provisions of the Thyssen deed of covenant, it will help toward an understanding of the transaction if the enactments of two continental countries dealing with the *depositum irregulare* of shares are briefly surveyed, so as to get an idea of the problems to which it gives rise and possible answers thereto. This, moreover, will not merely be an exercise in comparative law, for the practitioner may occasionally find himself called on to deal with investments in continental countries in this form, and the scheme of the *depositum irregulare* may engage the attention of the Jenkins Committee on company law as a means of simplifying our own rather cumbrous procedure for the transfer of shares. The two countries selected are France and Germany. They are not the only countries where the scheme is used; a considerable amount of business is done under this device in Switzerland by the Société Nominée de Genève and in Holland by the Nederlansch Administratie en Trustkantoor N.V. But French and German law are the most developed, and moreover illustrate a variety of approach.

French practice

In France the deposit of bearer shares is centralised under a body representing the banks, finance houses and stockbrokers known as the Société Interprofessionnelle pour la Compensation des Valeurs Mobilières (Sicovam), which was formed under a Government decree of 1949 (Décret no. 49–1105, art. 6). Banks, finance houses and stockbrokers are affiliated to Sicovam (art. 5), and they may deal with bearer shares received on deposit from their clients under the scheme of the decree unless expressly forbidden to do so (arts. 9 and 10). A deposit under the scheme entitles the depositary to return shares to his client of the same kind and denomination as those deposited, but not necessarily the identical shares (art. 9), and also to deposit his clients' shares with Sicovam (art. 5). The result of this is that each client is simply credited with a certain number of undifferentiated shares in the depositary's accounts, and each depositary is credited with a certain number of undifferentiated shares in the accounts of Sicovam equal to the number of shares the depositary has passed to it. The transfer of shares from one client to another or from one depositary to another consequently involves no more than book-keeping entries similar to those when money is transferred from one bank account to another. The vendor of shares simply hands to the purchaser a mandate addressed to his depositary to effect the transfer, and the purchaser hands the mandate to his own depositary for collection as he would hand in a cheque payable to his order to his bank for collection.

Although the deposited shares are treated as an undifferentiated mass, however, the client retains the same rights of property in his shares as though the transaction were a simple bailment (art. 11). Consequently, if the depositary becomes bankrupt or is wound up, the client can recover shares equal in number to those deposited out of the total of such shares in the depositary's possession, and if there are several such clients entitled to shares of the same kind, the available shares are apportioned between them (art. 12). The depositary's creditors, therefore, cannot claim the deposited shares, but, on the other hand, if the shares still in the depositary's possession are insufficient to meet all his clients' claims, they may prove as creditors in the bankruptcy or liquidation for the value of the shares they have not recovered. Similarly, if deposited shares are lost or destroyed, the depositary must take the steps open under French law to obtain replacement share certificates from the companies which issued the originals, but if he is unable to obtain replacements, the remaining certificates in respect of the same kind of shares are apportioned among the claimants, and they pursue whatever claims they may have against him for breach of duty as a bailee in respect of the unrecovered shares (art. 13).

German practice

German law is different in that it establishes no centralised system for the deposit of bearer shares, all the German banks operating independently in this respect. The relevant law is contained in the Depotgesetz of 4th February, 1937 (Reichsgesetzblatt 1937, Part, I, p. 171). This requires a contract of deposit under which the depositary may return shares of the same kind and denomination in place of those deposited, to be in writing signed by the client (s. 10), and the depositary is then discharged by returning such substituted shares (s. 11). The accounts of the clients are operated in the same way as under the French system, save that when a vendor sells shares to a purchaser who employs a different depositary, the share certificates have to be delivered physically to the purchaser's depositary. The client is treated as remaining the owner of the shares (Civil Code, art. 700), and if there is a deficiency of shares on the bankruptcy of the depositary or by reason of the loss of share certificates, the remaining shares are apportioned between the clients, and in bankruptcy the depositary's creditors have no claim thereto (Civil Code, art. 948; Konkursordnung, s. 43). If the deficiency has been caused by the wrongful act of the depositary, however, in bankruptcy the clients have also a preferential claim over all his other creditors for satisfaction out of the totality of shares held by him for the purpose of his business after abstracting shares which have been specifically claimed under the provisions just dealt with (Depotgesetz, s. 32 (3)).

German law also recognises a more radical kind of *depositum irregulare* by which the title to the deposited bearer shares passes to the depositary on the deposit, and the client has a mere personal claim against the depositary for replacement, and no proprietary rights at all (Depotgesetz, s. 15). The client under this arrangement, the *unregelmässige Verwahrung*, has no protection or priority in bankruptcy and no right to an apportionment of the shares held by the depositary in the event of loss. Many deposits with German banks are in this form, and it is submitted that the deed of covenant in respect of the Thyssen shares held by Westminster Bank, Ltd., is of this nature too.

Bailment or contractual relationship ?

At first sight the Thyssen deed of covenant appears to create a relationship between Westminster Bank, Ltd., and the holders of deposit certificates not far removed from a common-law bailment. The deed denominates Westminster Bank, Ltd., "the Depositary," and after reciting that the bank already holds certain Thyssen shares on deposit, cl. 3 provides for the deposit of further Thyssen shares by investors who wish to obtain deposit certificates in exchange. The bank undertakes to collect all moneys payable in respect of the deposited shares, whether as dividend, bonus or otherwise (cl. 6), and to distribute such payments among the holders of deposit certificates as soon as possible after receipt (cl. 7). If any further shares are offered for subscription by the Thyssen company in right of the deposited shares, the bank undertakes to pass on the offer to holders of deposit certificates in proportion to their interests and to exercise the right to subscribe to the extent that holders require it to do so; such further shares must be paid for by the holders who require the bank to act, and will be deposited with the original shares, and an appropriate number of further deposit certificates will be issued in respect of them (cl. 13). Similarly, if the Thyssen company issues bonus shares, they will be deposited with the original shares and the bank will issue further deposit certificates in respect of them to all the holders of the original certificates (cl. 7). Finally, any holder of deposit certificates may at any time require the bank to deliver Thyssen shares to him on surrendering deposit certificates of an equivalent nominal value (cl. 5).

On the other hand, there are other provisions in the deed of covenant which indicate that a bailment is not intended and that the relationship between the bank and the holders of deposit certificates is purely contractual, like the German *unregelmässige Verwahrung*. The most significant of these provisions is cl. 15, which states that certificate holders shall have no rights against the bank other than those expressly conferred by the deed of covenant, and that the Thyssen company and certificate holders shall have no rights against each other. This clearly contemplates that the ownership of the deposited Thyssen shares is vested in the bank and not in the certificate holders collectively, and that the various claims for shares of dividend and to participate in rights and bonus issues given to certificate holders are enforceable by them against the bank merely as contractual rights and not by virtue of ownership of the shares. This conclusion is reinforced by cl. 12, which enables the bank to vote on the deposited shares as it thinks fit in the interests of the certificate holders, but without being subject to any direction by them, and by cl. 11, which provides that the bank may circulate copies of annual accounts and reports received from the Thyssen company among certificate holders if it thinks fit, but, again, without being under the normal obligation of an agent to furnish all information relating to his agency on demand by his principal.

The scheme of the deed of covenant is undoubtedly a useful one to enable English investors to participate in issues of shares by oversea companies, and to reduce their difficulties in collecting dividends and availing themselves of rights offers by employing a well qualified institution for the purpose. It is nevertheless desirable for them to be aware of their legal position as holders of deposit certificates, for if similar schemes are established the financial strength of the institution holding the underlying securities should be taken into account in view of the weak position of the certificate holders in the event of the institution's insolvency.

(I would like to acknowledge the considerable help I have received in preparing this article from Dr. V. F. Lehmann, Dr. Jur., LL.D. (Rostock).)

R. R. Pennington.

SHORT, SIMPLE—AND WRONG

It is clear that this article will have to be anonymous. In the first place the writer is an actuary, and the Institute does not approve of its fellows contributing signed articles to the press—except, apparently, the daily and Sunday and financial newspaper press. In the second place the writer is a practising barrister-at-law, and his Inn does not approve of its members contributing signed articles anywhere.

The writer is not, and is not permitted to be, a practising actuary, so that there is no self-interest in his challenge to the view expressed in these columns by G.L., the author of "Draftsman Acquitted" (p. 691), that *Hultquist* v. *Universal Pattern and Precision Engineering Co., Ltd.* [1960] 2 W.L.R. 886; p. 427, *ante*, does not suggest that it is advantageous for a solicitor to obtain the advice of an actuary on the assessment of special damages in personal injury cases. Indeed, the author of that comprehensive and valuable article could hardly have done worse than to quote the problem of imaginary workmen filling hypothetical holes, for by the rules of simple proportion, to which the elementary arithmetic book adheres, if it takes one man an hour to fill the hole, sixty men can fill it in one minute. Here simple proportion simply does not apply, and similarly it is the writer's considered opinion, with profound respect to the Court of Appeal, that it ought not to have been applied in the *Hultquist* case.

Expectation of life

Before considering s. 2 (6) (*c*) of the Law Reform (Personal Injuries) Act, 1948, the writer notes that the plaintiff's agreed "actuarial expectation of life" was thirty-five years. Of course, with certain exceptions which it would be superfluous to mention, the courts will always accept any point on which both the opposing contestants are agreed, and if they agree upon the plaintiff's expectation of life, gratefully murmurs "So be it." The headnote in the All England Law Reports is in error in stating: "His expectation of life was thirty-five years," instead of saying that it was *agreed* at this figure. No one knows what was, in fact, his expectation of life. Indeed, what is an "actuarial expectation of life"? The

writer confesses that this is a question which, after forty years as an actuary, he would be unable to answer. As a lawyer he could answer it if the White Book contained a table of expectations, ordering that it, and no other table (of which there are legion), should be invariably employed, but he has never there found such a table, and should one appear, it is much to be hoped that it will not be referred to as a table of *actuarial* expectations of life, for it is unlikely that it would receive the support of any actuary for any considerable time, if at all, since the expectation of life, like the cost of living, is changing all the time. In any case, with such a table, there would be no question of the parties "agreeing." One of these days some enterprising solicitor will call an actuary, as an expert witness, to contravene the estimate favoured by the opponent.

In the absence of s. 2 (6) (*c*) the problem for the courts to decide would have been, as G.L. pointed out, or at any rate intended to point out, under s. 2 (1), when the extent of the injury is less than 20 per cent., so that a lump sum falls to be awarded, whether there should be deducted from the loss of earnings or profits—

(i) one-half of that lump sum payment, or

(ii) one-half of so much thereof as is adjudged to be in respect of so much of five years subsequent to the date of injury as is also subsequent to the date of the award,

and the only question would have been how much should be so adjudged. No wonder that five learned judges failed to arrive at the same formula, since, as Sellers, L.J., pointed out, none of the counsel engaged by either side in any of these five actions ever drew their lordships' attention to s. 2 (6) (*c*).

What common sense suggests

In ignorance of this paragraph of subs. (6), what would common sense suggest in the case of the figures used by G.L. in his illuminating formula (which, by the way, would have been still more illuminating if he had written it in the form: $\frac{200}{2} \times \frac{5-\frac{1}{2}}{30}$ instead of reversing the denominators)?

If we believe that sixty imaginary workmen could fill that hypothetical hole in one minute, or, for that matter, that 3,600 could fill it in one second, if, that is to say, we believe that simple proportion is the proper method to apply, then we shall arrive at the same figure of £15 as does G.L., always provided that the "agreed" expectation of life of thirty years of the man G.L. has substituted for the plaintiff to keep the arithmetic simple, is not that on the day he was injured, but of that man on the date of the award, when he was six months older.

Surely only a much abbreviated elementary education could induce anyone to believe that simple proportion applies. Anyone who so believes is invited to say whether he would prefer to have £100 given him to-day, or in thirty years' time if he is then still living. Surely he will prefer the immediate cash, and for three reasons:—

(i) Allowing for interest, the sooner one gets the money the more valuable it is.

(ii) One is alive now, and may not be alive in thirty years' time.

(iii) On the whole it is more likely that there will be inflation, than deflation, over the next thirty years.

If this be granted, it follows that, of a series of payments spread over the next thirty years, those of the first fifteen years are more valuable than those of the second fifteen, those of the first five years more valuable than those of any other of the five five-year periods which succeed it.

Thus it is argued that on the basis of common sense, unaided by subs. (6) (*c*), one would arrive at the conclusion that Upjohn, L.J., was on the right lines when he spoke of life annuities. What we want to know is how much of the one-half of the £210, namely, £105, represents the value of a life annuity limited at most to a period of five years, and how much represents the value of a life annuity deferred five years. (In fact we only need the former of these two figures, but we cannot calculate the one without calculating the other.) Incidentally this would have brought out a larger deduction in *Hultquist's* case than that at which the Court of Appeal arrived, thus reducing the award to a figure once more, as originally, below that of the amount paid into court, and producing a position as to costs the reverse of that which resulted from the judgment of the Court of Appeal. It is here contended, with respect, that the reason that Upjohn, L.J., abandoned the annuity concept, namely, that "it is most unlikely that the beneficiary would in fact purchase an annuity," is quite beside the point. For that matter it is quite unlikely that any person will live precisely to the end of his expectation of life and then promptly die.

Wording of s. 2 (6) (c)

Now let us look at the long-neglected words of s. 2 (6) (*c*), which, somewhat strangely, G.L. did not quote. They prescribe that for the purposes of s. 2—

> an industrial disablement gratuity shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement in respect of which it is payable.

It is difficult, of course, to build an uncrazy house on crazy foundations. Let us look again at the "disability gratuity" of £210, as the National Insurance (Industrial Injuries) Act, 1946, terms it. Section 12 (6) prescribes that—

> Where the extent of the disability is assessed for the period taken into account as amounting to less than twenty per cent., disablement benefit shall be . . .
>
> (*a*) of an amount fixed, in accordance with the length of the said period and the degree of disablement, by a prescribed scale . . .

The prescribed scale leaves the court no discretion; for the loss of the whole of an index finger the extent of the disability is 14 per cent. New amounts of disability gratuity were successively prescribed on a number of occasions, and lastly by S.I. 1957 No. 2074. Again, the court is given no discretion; for a 14 per cent. degree of disability the Second Schedule prescribes £210, without any regard to the age of the disabled person, and therefore with no consideration of "the length of the said period." If a grandfather, aged 70, and a grandson, aged 20, each lost the whole of an index finger, whether of the left hand or the right, the disablement gratuity is the same £210 for each of them. What has Hecuba to do with "expectation of life" or it with Hecuba —that "expectation of life" which featured so prominently in the *Hultquist* case?

Draftsman acquitted?

The draftsman of the Law Reform (Personal Injuries) Act, 1948, is acquitted by G.L. because he did, in fact, put certain words into s. 2 (6) (*c*), but against the background of the National Insurance (Industrial Injuries) Act, 1946, and S.I. 1957 No. 2074, and its forerunners, those certain words do not seem to have a very certain meaning. Nevertheless, groping through this fog, the writer, for himself, still feels

that when a payment is to be fixed by "taking into account" a period of time, compound interest cannot be ignored.

Even if it is not correct to make allowance for compound interest (and it is only fair to admit, as we have already seen, that the prescribed disablement gratuity does not take interest, either compound or simple, into account), to deduct a fixed and definite period from an expectation of life is actuarially, mathematically and statistically fallacious. Schoolboys have been caned, and rightly, for lesser arithmetical crimes. It is to be remembered that an expectation of life is an *average*, and one must *not* make deductions from averages, or indeed apply other simple arithmetical processes to them. According to one mortality table which chances to be at hand, for a male of a certain age whose expectation of life is thirty-five years, should he survive for five years the expectation will be almost precisely thirty-one years. This suffices to show the fallacy of deducting five years from the thirty-five-year expectation. If, as here, it is necessary to consider the first five years of a man's future lifetime, his expectation of life can, and should, be divided into two portions—

(*a*) his "expectation" during the next five years;
(*b*) his "expectation" after the next five years.

Of these two portions (*a*) can never be so much as five years, and (*b*) can never be nil, except for a man already aged 98, and then only on the basis that the appropriate mortality table *assumes* that no one will ever live beyond age 103. The older the claimant, the smaller does (*a*) become; by that same mortality table, where the male expectation of life is fifteen years, this divides into (*a*) 4·7 and (*b*) 10·3. What is to happen in a case such as the *Hultquist* case if the claimant is so old that his expectation of life is precisely five years? Or older, so that his expectation is only four years? There at least G.L.'s formula must be wrong. The answer is that a five-year expectation divides into (*a*) 3·23 and (*b*) 1·77, and a four-year expectation into (*a*) 3 and (*b*) 1 almost precisely. A court following the decision of the Court of Appeal would deduct one-half of the disablement gratuity in both these (admittedly extreme) cases, instead of 64·6 per cent. and 75 per cent. respectively of that one-half.

More specific prescription required

To summarise, what is wanted is a more specific prescription in s. 2 (6) (*c*), and until we get it one must contend that when a disablement gratuity is made "in accordance with the length of the said period," i.e., in the instant case the period during which the injured person will continue to be without his index finger, which on all experience is likely to be the whole of his future lifetime, only an actuary can tell us (by what has been neatly termed "an educated guess") how much of that gratuity is applicable to the first five years after the cause of action accrued.

"BARFIA."

Landlord and Tenant Notebook

MISTAKEN IDENTITY

IN *Ingram and Others* v. *Little* [1960] 3 W.L.R. 504; p. 704, *ante* (C.A.), the court held, by a majority (and giving leave to appeal), that two ladies who had been induced to take a cheque (subsequently dishonoured) in exchange for their car were, by reason of the fact that the drawer had told them that he was identical with a person whose name and address he gave them, entitled to recover that car from a third party to whom he had "sold" it. Wide areas were searched for authority on the effect of such deception, and among the eighteen decisions cited there was the landlord-and-tenant case of *Sowler* v. *Potter* [1940] 1 K.B. 271. That was a case in which Tucker, J. (as he then was), held that the grant of a lease of a restaurant to a grantee who had concealed her identity, she having been convicted of permitting disorderly conduct at a neighbouring café, was void; and in so holding the learned judge followed certain decisions which were not landlord-and-tenant decisions.

Personal considerations

Smith v. *Wheatcroft* (1878), 9 Ch.D. 223, gave us a statement of principle. One of the four plaintiffs had negotiated with the defendant for the purchase of some land, and was about to break off the negotiations because of the price asked when he found that a colliery company would be willing to pay it, and he then, without disclosing that circumstance, came to terms with the defendant as agent for the company. The defence included the allegation that the purchaser had represented that he wanted the land for his own personal use in order to hold it with other land belonging to him or his father, and that he knew that the defendant was unwilling to sell to the company. Fry, J., having found that this defence was an afterthought, referred to a passage in Pothier, *Traité des Obligations*, much cited in these cases: "Does error in regard to the person with whom I contract destroy the consent and annul the agreement? I think that the question ought to be decided by a distinction. Whenever the consideration of the person with whom I am willing to contract enters as an element into the contract which I am willing to make, error with regard to the person destroys my consent and consequently annuls the contract. . . . On the contrary, when the consideration of the person with whom I thought I was contracting does not enter at all into the contract, and I should have been equally willing to make the contract with any person whatever as with him with whom I thought I was contracting, the contract ought to stand." Fry, J., found that the case before him was an "on the contrary" case.

One might have expected Pothier, with Gallic logic, to have made it "prevent consent and thus agreement" rather than "destroy the consent and annul the agreement," etc., but it is comforting to find that English lawyers are not alone in using such convenient but inaccurate expressions as "waiver of a notice to quit," "void contract" and "bigamous marriage."

A moneylending case

The principle was held to be applicable in *Gordon* v. *Street* [1899] 2 Q.B. 641 (C.A.), in which it was found that the defendant had been induced to borrow money from the plaintiff by the latter's representing himself to be someone else, the jury accepting the defendant's evidence that if he had known who the plaintiff was he would not have dealt with him. The actual ground of the decision was fraud, the

defendant being held to have repudiated the contract within a reasonable time of discovery (the jury had found that he had done so within a reasonable time after he knew that he could). But A. L. Smith, L.J., indicated that, if fraud had not been alleged and proved, the passage in Pothier would have entitled the defendant to relief.

Unknown customer

Fry, J.'s invocation of Pothier was approved by Lord Haldane in his speech in *Lake* v. *Simmons* [1927] A.C. 487, and applied to a case in which a jeweller had "sold" two pearl necklets to a lady who had represented herself to be the wife of a man with whom she was, in fact, living, and had told him that her husband wanted to give her a £1,000 pearl necklet as a birthday present and that a relative staying with them wanted to give her sister a similar necklet as an engagement present. The *de facto* husband knew nothing about the transaction and the relative did not exist, but the jeweller entered their names given in his books and allowed the lady to take the necklets away on approval. She made away with them, and when the jeweller claimed their value from his insurers he was confronted with an exception exempting them in the case of loss by theft committed by any customer in respect of goods entrusted to him by the assured. It was held not only that the caller had not been a customer but also that the necklets had not been entrusted to her. Lord Haldane's speech includes: "In the other type of case referred to by Pothier, where the belief of the contracting seller depends wholly on identity of character or capacity, there is, as Mr. Justice Holmes says at the beginning of the ninth lecture in his book on the common law, no contract, because there is really only one party."

Tenancies

It will have been noticed that when Pothier came to be considered by an Anglo-Saxon jurist, a rather more concrete element than mere identity was introduced: identity of character or capacity. It was certainly the element of character which was the decisive factor in *Sowler* v. *Potter* [1940] 1 K.B. 271. The defendant, then called Anna May Robinson, had been convicted, on 12th May, 1938, of permitting disorderly conduct at a café in the City of London. In June, calling herself Ann Potter, she negotiated for and obtained from the plaintiff a lease of a room in which she proposed to run a restaurant. The landlord's agent knew about the conviction and, as Tucker, J., put it, thought that he was entering into a contract with some other person than the Mrs. Anna Robinson who had been convicted. The consideration of the person with whom the contract was made being a vital element, the Pothier principle, as cited in *Gordon* v. *Street* (though in that case the contract was considered voidable on the ground of fraud rather than void), applied, and the learned judge granted a declaration that the lease was void *ab initio* and awarded damages for trespass.

A protest against the introduction of this "doctrine of French law" was uttered by Denning, L.J., in the course of his judgment in *Solle* v. *Butcher* [1950] 1 K.B. 671 (C.A.), in which the parties to a lease had both been under a mistake as to the applicability of rent control, and rescission was granted on terms, the lease not being void *ab initio*; and later the learned lord justice referred to *Cooper* v. *Phibbs* (1867), L.R. 2 H.L. 149, in which a "tenant" had rented a fishery which in fact belonged to him, and it was held that the agreement was voidable, not void. But one may question whether, if the *Sowler* v. *Potter* lease had been set aside on terms, the practical consequences would have been different.

I do not think that anything more has been heard of the decision, but *Danziger* v. *Thompson and Others* [1944] K.B. 654, is of interest, the plaintiff suing a married couple and their daughter on a tenancy agreement signed by the daughter, described as "the tenant," who was nineteen years of age at the time. Evidence was admitted showing that the father had agreed to take the premises, a flat, in the daughter's name, and judgment for arrears of rent was given against him. In the following year, it was held in *Epps* v. *Rothnie* [1945] K.B. 562 (C.A.), that a landlord could show that his brother, who had signed the tenancy agreement describing himself as the landlord, was acting as his agent.

Tailpiece

When writing the above—on the fifth day of this month—I was from time to time noisily reminded of a certain tenancy of a vault granted in March, 1605, to one Thomas Percy, whom the landlord took to be a fuel merchant. Quiet enjoyment was rudely interrupted when (I understand it was actually on 4th November) the tenant's licensee, one Fawkes, was arrested on the premises, and I do not know what happened to the tenancy. But it would seem that it could have been declared void *ab initio*.

R. B.

"THE SOLICITORS' JOURNAL," 17th NOVEMBER, 1860

On the 17th November, 1860, THE SOLICITORS' JOURNAL reported the sequel to a case of assault in Germany involving an English traveller: "The inquiry instituted by the Court of Discipline . . . into the conduct of M. Möller, the Procurer of Bonn, in the case of Captain Macdonald has terminated. The investigation was ordered by the superior legal authorities in consequence of the complaints made of the intemperate language used by M. Möller while acting as public prosecutor in the charge of assault. The Court of Discipline does not review the facts of the case, only the conduct of the judicial functionary, as far as it is impugned. M. Möller in explanation stated that the terms he used did not apply to Englishmen in general, not even to all English travellers, but only to those who by their misbehaviour frequently provoked collisions with the authorities. But, as to the question of demeanour and conduct, the superior judges have decided that M. Möller's violent language was unbecoming his judicial functions, and have therefore visited him with a reprimand."

Obituary

Mr. ALFRED BEESLY, retired solicitor, of Letcombe Regis, Berkshire, who practised in London, W.C.1, until 1939, has died at the age of 87. He was admitted in 1897.

Mr. ARTHUR MALCOLM TROUP, retired solicitor, of Northampton, died on 3rd November, aged 87. Admitted in 1900, he was a past president of the Northamptonshire Law Society.

HERE AND THERE

WAY TO THE BENCH

You know, at least you ought to know, that in the United States a great many of the judicial and legal offices are elective. Here in England we take it for granted that the call to the Bench shall come from aloft, an arbitrary, disembodied voice from somewhere high up in the dome of the temple of Themis. All that is expected of the surprised and gratified recipient of the summons is to answer the call. This method, partaking as it does of the nature of an apotheosis, works very well indeed, for it nourishes that *mystique* without which no human institution can command the reverence necessary for its proper functioning. I think the Bar commanded more reverence than now in those distant days when barristers were simply called without any of the degrading preliminaries of having to present themselves for examination. The silk, or super-barrister, who is still called within the bar by what is akin to simple natural selection, now monopolises all the popular adulation. Yet there are many other ways besides our own in which judges might be selected. In pre-Revolutionary France judicial office was largely hereditary. One can conceive a system in which judicial office might be purchased. Indeed, minor judicial offices, like Masterships in Chancery, *were* purchased in England until a sudden revulsion of public feeling over a particularly picturesque transaction (the money was delivered in a clothes basket) brought about the downfall of Lord Chancellor Macclesfield. Still, the practice had passed muster until then. After all, commissions in the army were sold far into the nineteenth century, and, if ever there was a matter of life and death on a large scale, that was it. Or judges might be chosen by lot or by alphabetical rotation, like jurymen, or by seniority, or by co-option, or, of course, by competitive examination. The English never seem to visualise any of these stimulating possibilities, any more than they visualise the possibility of popular election in the American manner, so that one day we might find the Strand and Chancery Lane placarded with highly coloured exhortations to vote for aspirants competing feverishly to be Lord Chief Justice or Master of the Rolls.

QUEST FOR CORONER

We have the word of a former Michigan District-Attorney turned author that in his first youthfully exuberant campaign for office he did not neglect to placard the public conveniences and became known as "The Face on the Toilet Door," that he spent a day and a night treating thirsty people in a remote logging village before he discovered that by a map-reading slip he was twelve miles out of his county, that disguised as a burlesque baby he took part in a baby show parade, scattering leaflets from a vehicle drawn by a donkey, the emblem of his party, and was laughed into office. After that one is inclined to believe absolutely anything one sees in an American paper about an American election, and the other day the *New York Herald Tribune* had a very entertaining piece about an election for coroners which has somehow got itself tangled up with the Presidential election. The coroners' election was obviously a far more difficult and delicate affair to run because of the markedly restricted material from which any candidate could construct a platform. The dead are not, of course, eligible to vote and few of the living electors look forward to the immediate prospect of passing under the coroner's jurisdiction. One of the candidates, an ear, nose and throat specialist, has coined the neat slogan, "Be Dead Right," which, though lacking in political content, is certainly sound in principle. The coroners' election is, of course, run on party lines. One of the Democrats has been telling the electorate that in the event of a nuclear war the office will be one of the most important in the country, but then, political commentators have pointed out, the Democrats fighting the Presidential election have been promising that, if they succeed, there will be no nuclear war. On a less apocalyptic level it can be and apparently has been argued that the morticians' industry must be adversely affected if an inept coroner drives suicides and murderers into more efficiently administered territories, and conversely it has been suggested that a fall in the statistics of death by violence may only mean that the sitting coroner has for his own purposes been finding death from natural causes, contrary to the evidence. Conducted by officials fresh from such an electoral field, American inquests must have a liveliness which marks a pleasing contrast between the quick-witted and the dead.

RICHARD ROE.

H.M. LAND REGISTRY NOTICE

1. Further to relieve congestion in H.M. Land Registry, Lincoln's Inn Fields, the registers, filed plans and index maps relating to the City and County of Leicester, the Counties of Derbyshire, Warwickshire, Staffordshire, Worcestershire and Nottinghamshire are being removed to Block 4, Government Buildings, Chalfont Drive, Nottingham, on 1st December next, where as from that date the registration of title work arising from those areas will be done.

2. In order to save time and transport, all applications for registration, searches, etc., affecting titles in these areas should be sent direct to the Nottingham Sub-Office as from 1st December, 1960.

3. Personal searches of the registers and index maps may be made at Nottingham, but where it is desired to inspect these records in London they will be made available at Lincoln's Inn Fields at short notice.

4. The postal address of the Nottingham Sub-Office is H.M. Land Registry, Government Buildings, Chalfont Drive, Nottingham. (Telephone Number 77711.)

PETTY SESSIONAL DIVISIONS IN SOMERSET

The Petty Sessional Divisions (Somerset) Order, 1960 (S.I. 1960 No. 1968), coming into force on 1st January, 1961, provides that the divisions of Wellington and Wiveliscombe shall be combined to form a new division to be known as the Wellington division, and makes transitional and consequential provisions.

LAWYERS ON TELEVISION

An eighty-minute television documentary on the legal profession entitled "The Lawyers" is to be presented by the B.B.C. at 9.30 p.m. on 24th November. Nearly 200 solicitors and barristers took part in the making of the film, in which no professional actor appears.

Mr. Denys T. Hicks, O.B.E., President of The Law Society, was among the guests at the annual dinner of the CHARTERED AUCTIONEERS' AND ESTATE AGENTS' INSTITUTE at Grosvenor House, Park Lane, London, on 3rd November.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

TITHE: CORN RENTS: "AVERAGE PRICE" OF WHEAT: WHETHER "PRICE" INCLUDES DEFICIENCY PAYMENTS

***In re* Scremby Corn Rents**

Lord Morris of Borth-y-Gest, Pearce, L.J. and Pilcher, J.
5th October, 1960

Appeal from the Divisional Court ([1960] 1 W.L.R. 648; p. 528, *ante*).

By an Inclosure Act of 1801, and an award made under it, certain corn rents were vested in the rector of Scremby and his successors, now, by virtue of the Tithe Act, 1925, and the Church Commissioners Measure, 1947, the Church Commissioners. The Act provided that the amount of the rents, *inter alia*, should be determined by reference to the "average price of good marketable wheat in the County of Lincoln during the term of twenty-one years ending at Michaelmas, 1799," which price was ascertained by the award to be 5 7/10ths shillings per Winchester bushel. The Act further provided that the amount of the rents payable should be varied at intervals of twenty-one years as declared by an order of quarter sessions if from the report of three arbitrators it appeared that the "average price" of a Winchester bushel of good marketable wheat in the County of Lincoln for the twenty-one years then last past was more or less by threepence than the average price set out in the award. The corn rents payable were last varied in July, 1896, when the average price was found to be 4s. 3½d. On 5th March, 1959, on the application of the Church Commissioners, quarter sessions appointed three arbitrators to inquire into and ascertain the average price of a Winchester bushel of good marketable wheat for the last twenty-one years. The arbitrators found that such average price was 10s. 1d., and that, in addition to the sum received from the purchaser, the grower received deficiency payments under the Cereals (Deficiency of Payments) Order, 1955, which for the twenty-one years ending 5th March, 1959, averaged 11d. a Winchester bushel, and they awarded the average price for the twenty-one years to be 11s. Quarter sessions were of the opinion that the deficiency payments should not be included in the average price, and ordered that the rents be increased in the proportion that 10s. 1d. bears to 5 7/10ths shillings. On a case stated by quarter sessions in which the question for the opinion of the court was whether the deficiency payments ought to have been included as part of the average price and which set out alternative orders, the decision of quarter sessions was upheld. The Commissioners appealed.

LORD MORRIS OF BORTH-Y-GEST said that the words of the Act seemed to him to be quite clear. The word "price" was a word which denoted what a grower or seller would obtain for his wheat when he sold it. His lordship could not think that if by some later legislation the grower or seller was to get from some other source than from his purchaser some additional benefit, such benefit could properly be comprehended within the word "price." There was nothing in the Act which suggested that corn rents were to be related to net profits made by owners of land. There was no ambiguity and his lordship was in agreement with the court of quarter sessions and with the Divisional Court and would therefore dismiss the appeal.

PEARCE, L.J., said that no ambiguity had been introduced into the words of the Act or their application. It was still possible to ascertain the average price of good marketable wheat. That price was independent of the subsidy. The fact that the subsidy would probably follow the sale did not alter the price at which the wheat was in fact sold or make the subsidy part of that price. Whether Parliament in 1801, if it had foreseen subsidies, would have provided that the amount of the subsidy should be added to the market price was uncertain. It was always open to Parliament to do so now if it thought fit. But it had not taken that course and the clear words of the Act as they stood must be followed.

PILCHER, J., agreed. Appeal dismissed.

APPEARANCES: *G. D. Squibb*, Q.C., *Edwin Jowitt* and *Desmond Fennell* (*Taylor, Jelf & Co.*, for *Danby, Eptons & Griffith*, Lincoln).

[Reported by A. H. BRAY, Esq., Barrister-at-Law] [1 W.L.R. 1227

ESTATE AGENT: CONTRACT FOR PAYMENT OF COMMISSION: MEANING OF "PROSPECTIVE PURCHASER"

Drewery and Drewery *v.* Ware-Lane

Ormerod, Willmer and Upjohn, L.JJ. 5th October, 1960

Appeal from Dartford County Court.

On 3rd January, 1959, a firm of estate agents, who had been instructed by the owner of a leasehold house to sell the property, informed him of an offer by one *S* to purchase the property. He agreed to accept the offer and thereupon read and signed two documents on printed forms prepared by the estate agents. The first document, described as the "letter of authority," provided by cl. 4: "I agree to pay you commission at the rate laid down by the various professional institutes . . . if and when (*a*) a prospective purchaser signs your 'purchaser's agreement' and (*b*) I sign your 'vendor's agreement' . . ." The second document signed by the owner was the estate agents' "vendor's agreement." On the same day *S* signed their "purchaser's agreement." *S*, who was unable to purchase without a mortgage, delayed applying for a mortgage pending the outcome of negotiations to acquire the freehold of the premises. On 12th January, 1959, the owner informed the agents that as no progress had been made with the sale to *S* he had disposed of the property to another person. On the estate agents' claim for their commission under the contract, the county court judge held that it was payable. The owner appealed.

ORMEROD, L.J., said that the case turned on the construction of cl. 4 of the letter of authority which constituted the agreement between the estate agents and the owner with regard to the sale of the house. The county court judge had concluded that this was a case where in clear and unequivocal terms it was laid down in the contract that commission was payable when events had happened which in fact did happen, namely, that the vendor had signed the "vendor's agreement" as put forward by the estate agents and a "prospective purchaser" had signed their "purchaser's agreement." The question turned on the meaning of "a prospective purchaser," on which there was no authority. It appeared to his lordship that the word "prospective" did not connote necessarily either the term "ready" or "willing" or "able"; it meant a man who had the question of buying the property in prospect or in contemplation and was prepared to make an offer with regard to it. That did mean that it must be a bona fide prospect, and it would be for the defendant to prove that an offer made in those circumstances was not a bona fide offer. The county court judge had put the matter clearly when he said: "It seems to me that a 'prospective purchaser' is essentially different from 'a purchaser.' A 'prospective

purchaser' is one who has purchase in prospect or contemplation, and he may never advance to the stage of becoming a purchaser." On the evidence in this case it would be extremely difficult to describe *S* as anything other than a prospective purchaser; and accordingly on the construction of cl. 4 of the letter of authority the commission was payable. The appeal must be dismissed. It might very well be undesirable that agreements of this kind should be signed by prospective vendors, and a prospective vendor might be wise to examine with great care an agreement which he signed in these circumstances; but that was not a matter for this court.

WILLMER and UPJOHN, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *L. K. E. Boreham* (*Kinch & Richardson*, for *T. G. Baynes & Sons*, Dartford); *M. H. Jackson Lipkin* (*E. Edwards, Son & Noice*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 1204

LANDLORD AND TENANT ACT, 1954: PROPOSED TERMS OF NEW TENANCY: DETERMINATION BY COURT

Morgan *v.* Jones

Ormerod, Willmer and Upjohn, L.JJ. 6th October, 1960

Appeal from Ammanford County Court.

The tenants of business premises let on a weekly tenancy at £1 a week applied under the provisions of the Landlord and Tenant Act, 1954, for a new tenancy, setting out in their originating summons their proposed terms, namely, a ten-year tenancy at £52 a year. The landlord put in an answer on the lines of Form 336, as prescribed by Ord. 40, r. 8 (2), of the County Court Rules, 1936, as amended, stating that he opposed the grant of a new tenancy because of the tenants' persistent delay in paying the rent; but he left blank para. (2) of Form 336, which gives to a landlord the alternative of objecting or not objecting to the applicant's proposed terms for a new tenancy. When the application came on for hearing in the county court the landlord had available evidence as to valuation in order to oppose the terms proposed by the tenants; but the county court judge declined to allow that evidence to be called, holding that he was bound by what he described as the "pleadings" as they stood, and that he had no discretion to consider terms other than those proposed by the tenants. No leave to amend the answer was sought on behalf of the landlord; and the judge granted a new tenancy on the terms proposed by the tenants. The landlord appealed against that part of the decision, and he was given leave to amend his answer to comply with the rules by stating that he objected to the proposed terms.

UPJOHN, L.J., giving the first judgment, said that the task of the judge under the Act of 1954 was set out in ss. 29 (1), 33 and 34, and, that being his duty, he could only determine whether the terms of a tenancy were reasonable in all the circumstances if he heard evidence on that matter. Mere proposals put forward by applicants for a new tenancy were quite insufficient evidence on which a judge could come to any conclusion. In the absence of agreement, the judge must exercise his judicial discretion and that could only be exercised on evidence. It was wrong to regard the documents required on these applications as pleadings in any strict sense. Even if a respondent did not appear the judge was still bound to exercise his discretion on evidence. His lordship could not accept the submission for the tenant that the true inference on the facts was that there was an agreement satisfying the provisions of ss. 33 and 34 of the Act. Paragraph (2) of Form 336 was optional in its terms, and if the landlord failed to state whether he did or did not object to the terms proposed, the court could not draw any inference from that omission. The case should be remitted to the county court judge to consider the terms proposed and determine their reasonability in all the circumstances; and if they were not so on the evidence, it was his duty to grant a new tenancy on such terms as would accord with ss. 33 and 34.

ORMEROD and WILLMER, L.JJ., agreed.

APPEARANCES: *David Sullivan* (*Walker, Charlesworth & Jefferson*, for *G. Tracy Phillips*, Ammanford); *Breuan Rees* (*Samuel Griffith & Co.*, Ammanford).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 1220

LANDLORD AND TENANT: CONTRACT TO LET PREMISES FOR USER REQUIRING DEVELOPMENT PERMISSION: PERMISSION NOT OBTAINED

Best *v.* Glenville

Ormerod, Willmer and Upjohn, L.JJ. 10th October, 1960

Appeal from Marylebone County Court.

In March, 1959, the plaintiff, the lessor of leasehold premises, agreed with the defendant to let to her a ground floor room at £10 a week for the purposes of a club. Both parties knew that such user was a "development" within s. 12 of the Town and Country Planning Act, 1947, for which planning permission was required, and during the negotiations for the letting the defendant undertook to apply for such permission to the local planning authority. The defendant entered into possession, made certain alterations, and opened the premises as a club in April, 1959. She applied for planning permission, which was refused, and that refusal was upheld by the Minister on appeal. The defendant paid the agreed rent for sixteen weeks until July and remained in possession of the premises until October, but refused to pay rent from July to October. On the plaintiff's claim for £140 for rent from July to October, the county court judge gave judgment in his favour. The defendant appealed.

ORMEROD, L.J., said that counsel for the defendant relied on the words of Lord Goddard, C.J., in *A.-G.* v. *Smith* [1958] 2 Q.B. 173, at pp. 180–1, that s. 12 (1) of the Act of 1947 meant that "development of land carried out without permission is unlawful—it is contrary to the Act," and argued that Lord Goddard was holding that a contract based on a contravention of the Act must be unenforceable in a court of law. His lordship could not accept that. Lord Goddard was not saying that an agreement which had in view development of land carried out without permission was illegal but that such development was unlawful because it was contrary to the Act. His lordship was quite satisfied on the facts of this case that this contract was entered into by the plaintiff for a perfectly proper and legal purpose. Further it was clear from the evidence accepted by the county court judge that the parties intended that that purpose should be carried out in a legal way in accordance with the Act of 1947. The fact that permission was not granted made no difference to the question whether the agreement was legal or not. The appeal should be dismissed.

WILLMER and UPJOHN, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *S. N. Bernstein* (*Beach & Beach*); *Leolin Price* (*Richardson, Sadler & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 1198

Chancery Division

CAPITAL OR INCOME: DEBENTURES HELD BY TRUSTEE: WHETHER STATEMENT BY COMPANY BINDING AS BETWEEN TENANT FOR LIFE AND REMAINDERMAN

***In re* Morris's Will Trusts; Public Trustee *v.* Morris and Others**

Cross, J. 20th October, 1960

Adjourned summons.

By his will, a testator who died on 28th December, 1907, empowered his trustees to allow any part of his estate to remain in its then state of investment. At the date of his

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death the testator's estate included £11,400 first mortgage debentures of a company. In 1933 the court approved a scheme of arrangement entered into between the company and the holders of its first mortgage debentures whereby the half-yearly instalments of interest on the debentures falling for payment during the period 1st January, 1933, to a prescribed date not earlier than 31st December, 1933, nor later than 31st December, 1935, were to be paid only to the extent thereby provided and all instalments of interest, if not paid at the due date, were to carry interest at 6 per cent. per annum from that date until the date of payment, and interest on interest was to be payable and should be secured in the same way as the interest. By a series of further schemes of arrangement the period of postponement of interest was extended to 31st December, 1955. By another scheme of arrangement, "the 1955 scheme," entered into in that month and approved by the court on 21st February, 1956, it was provided that against delivery of the debentures, including all unpaid interest coupons, the company should procure the allotment and payment to the holders by a company formed in Canada for the purpose of taking over the assets of the company, of U.S.$100 of the 6 per cent. debenture stock of the Canadian company, U.S.$70 5 per cent. convertible debenture stock of that company and £40 sterling in respect of each £100 of the debentures held by them. It was further provided by cl. 5 that on the scheme becoming operative all the obligations of the company in respect of interest accrued on the debentures and interest accrued on the interest secured and not paid on the due dates should be cancelled and thereafter cease to accrue, and that the principal secured by the debentures should be satisfied by the allotments and payments by the Canadian company. From time to time the testator's trustees sold part of his holding, and immediately before the 1955 scheme came into operation only £4,300 of the debentures remained unsold. Pursuant to the order approving the 1955 scheme, £1,720 cash, U.S. $4,300 6 per cent. debenture stock and U.S.$3,010 5 per cent. convertible debenture stock of the Canadian company were paid to the trustee of the will, the stock together totalling an amount equivalent to £2,580, the total amount paid thus amounting to £4,300, and the £1,720 cash bearing approximately the same proportion to £4,300 as the interest and interest on interest bore to the principal, namely, 40 per cent. The amounts due to the trustee at this date were £4,300 in respect of principal, £1,526 less tax for unpaid instalments and £1,733 less tax for interest accrued on interest. The trustee took out a summons to determine whether the whole of the cash and securities received by him should be treated as capital, or whether some, and if so, what part, should be treated as income.

CROSS, J., said that where trust funds were properly invested on a mortgage and the interest fell into arrear, if the security realised less than the principal and arrears of interest, the proceeds were normally divisible between income and capital in shares bearing the same proportion to each other as the arrears of interest and the principal (see *In re Atkinson* [1904] 2 Ch. 160). Clause 5 of the 1955 scheme was undoubtedly binding as between the company and its debenture-holders. The question was whether, being so binding, it excluded the application of the principle in *In re Atkinson* between the beneficiaries under trust instruments where the debenture-holders were trustees. There could be no case for exercising any jurisdiction founded on breach of trust. The trust holding was far too small to have influenced the voting at the meetings of debenture-holders which approved the scheme by the requisite majorities. The most that the trustee could have done would have been to ask the judge who approved the scheme for some modification of its terms in the interests of his income beneficiaries, and no argument based on his failure to take this course had been developed before his lordship. The provision cancelling all arrears of interest would, if conclusive, operate most unfairly as between capital and income. It was obviously inserted with tax considerations in mind and without any thought of the position as between tenant for life and the remaindermen under settlements made by mortgagees. In those circumstances, he saw no reason why he should hold that the terms of the scheme excluded the rule in *In re Atkinson*, and he found support for this conclusion in the decision of the Court of Appeal in *Smith* v. *Law Guarantee and Trust Society, Ltd.* [1904] 2 Ch. 569. The general equitable principle of apportionment was not precluded by the omission of a proviso in the scheme that the nature of the payments was not to be conclusive where the debenture-holder was a trustee. Therefore, a fraction of the cash and securities bearing the same proportion to the whole as the amount of the arrears of interest on the debentures and of the unpaid interest on interest not paid on the due date bore to the total sum must be treated as income and the rest as capital.

APPEARANCES: *J. A. Wolfe* (*Clement G. Lawrence*); *L. H. L. Cohen* (*Leslie P. D. Small*); *J. P. Brookes* (*Foyer, White & Prescott*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [1 W.L.R. 1210

Queen's Bench Division

TOWN AND COUNTRY PLANNING: "PERSON AGGRIEVED" BY DECISION OF MINISTER

Buxton *v.* Minister of Housing and Local Government

Salmon, J. 28th July, 1960

Application under s. 31 (1) of the Town and Country Planning Act, 1959.

An appeal by a company against the refusal of the local planning authority of permission to develop land owned by the company by digging chalk was allowed by the Minister. Owners of adjacent property applied to the High Court under s. 31 (1) of the Town and Country Planning Act, 1959, to quash the decision of the Minister on the ground that the proposed operations by the company would injure their land, and that they were persons aggrieved by the action of the Minister.

SALMON, J., said that anyone given a statutory right to have his representations considered by the Minister impliedly had the right that the Minister, in considering those representations, should act within the powers conferred upon him by the statute and should comply with the relevant requirements of the statute. If those rights were infringed, then any such person was an aggrieved person within the meaning of s. 31 of the Act of 1959. The applicants for planning permission, the local authority and any owner who had made a representation to the Minister under s. 37 were persons to whom s. 31 applied. The Minister's action which the applicants sought to challenge infringed none of their common-law rights. They had no rights as individuals under the statutes. Accordingly, none of their legal rights had been infringed, and in those circumstances it could not have been the intention of the Legislature to enable them to challenge the Minister's decision in the courts. Application dismissed.

APPEARANCES: *F. H. R. Layfield* (*Barlow, Lyde & Gilbert*, for *H. Stanley Tee*, Bishop's Stortford); *J. R. Cumming-Bruce* (*Solicitor, Ministry of Housing and Local Government*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 866

JURISDICTION OF QUARTER SESSIONS: STATUTORY EXEMPTION FROM PENALTY UNDER THIRD PARTY PROCEDURE: APPEAL AGAINST IMPOSITION OF PENALTY

R. *v.* Epsom Justices; *ex parte* Dawnier Motors, Ltd.

Lord Parker, C.J., Ashworth and Elwes, JJ.

28th October, 1960

Applications for orders of certiorari and mandamus.

An information was laid against the applicants under s. 2 (2) of the Merchandise Marks Act, 1887, charging them with selling goods to which a false trade description was applied, and informations were also preferred against two of their employees charging them with aiding and abetting in the commission of that offence. The applicants preferred informations under s. 6 of the Merchandise Marks Act, 1926, against the two employees as the actual offenders, so that, on proof that they had used due diligence to enforce compliance with the provisions of the Act and that the employees had committed the offence without their consent, connivance or wilful default, they would be exempt from any penalty. The justices found that the applicants were guilty of the offence charged, that the employees were guilty of aiding and abetting, and that the informations preferred by the applicants against the employees were not made out, and they dismissed the latter informations and fined the applicants £50 on the charge. The applicants appealed against that penalty to quarter sessions, their notice of appeal stating that the general grounds of appeal were that "the penalty was too severe." No notice of appeal was served on either of the employees. Before quarter sessions the applicants sought to establish that in fact they had used due diligence to enforce compliance with the provisions of the Act and that, as the two employees had committed the offence without their consent, connivance or wilful default, they were entitled to exemption from penalty under s. 6 of the Act of 1926. Quarter sessions considered that there was no jurisdiction to hear an appeal against the imposition of a penalty, but, considering the penalty imposed was too severe, reduced the fine to £25. The applicants sought an order of certiorari to quash the conviction on the ground that the justices had come to a conclusion on the information before giving them an opportunity to state their case, and for an order of mandamus requiring quarter sessions to hear their appeal against the finding of the justices that they (the applicants) had failed to show themselves entitled to exemption under s. 6 of the Act of 1926.

LORD PARKER, C.J., reading his judgment, said that the procedure to be adopted at the hearing of any charge such as this must enable a defendant to raise matters of defence and only after that had been done should the justices go on to consider whether he could obtain exemption from penalty. But the applicants, on whom the onus lay, had failed to satisfy the court that that procedure had not been adopted and, accordingly, the application for certiorari failed. Third party procedure of the type found in s. 6 of the Act of 1926 was to be found in many statutes; in some, as here, it went to exemption from penalty, cf. Shops Act, 1950, s. 71 (6), and Sale of Food (Weights and Measures) Act, 1926, s. 12 (5); in others it went to defence and provided for acquittal; cf. Food and Drugs Act, 1955, s. 113 (1), and Factories Act, 1937, s. 137 (1); again, in some cases it provided that the actual offender "may" be convicted. In his lordship's judgment an appeal lay in all those cases; it was wrong to look on the third party proceedings as separate proceedings, nor was the acquittal or exemption from penalty conditional on the conviction of the actual offenders. Assuming that on such an appeal it was not open to quarter sessions to bring about the conviction of the actual offender, it did not follow that the exemption from penalty or acquittal of the defendant was thereby rendered impossible. But appeal to quarter sessions was a creation of statute, and the applicants' notice of appeal was on its face merely a notice of appeal against severity of penalty, not against refusal to grant exemption. Again, the "other party" in s. 84 (1) of the Magistrates' Courts Act, 1952, to whom notice of appeal must be given, clearly included the third party in such an appeal. The notices of appeal, therefore, were not in order, and the application for mandamus failed on that ground.

ASHWORTH and ELWES, JJ., agreed. Applications refused.

APPEARANCES: *Eric Crowther* and *John Clarke* (*Sharpe, Pritchard & Co.*, for *A. R. Drummond & Co.*, Epsom); *Robin Simpson* (*Crofts & Ingram & Wyatt & Co.*, for *W. W. Ruff*, Kingston-upon-Thames).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 872

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: DIVORCE: DEATH OF PARTY: COSTS

Kelly *v.* Kelly and Brown

Marshall, J. 27th July, 1960

Summons adjourned into court.

The petitioner died before a decree *nisi* on the ground of adultery had been made absolute and before an order for costs against the co-respondent had been taxed. It was submitted that with the abatement of the suit the order for costs abated with it and was not enforceable by the personal representatives.

MARSHALL, J., said that he saw no reason why he should not apply s. 19 of the Attorneys and Solicitors Act, 1870, to the present case, and hold that the executor of the husband's estate, "being a person interested" in the order made against the co-respondent in respect of the costs, was entitled to an order that the costs be taxed, and then proceed to enforce it. There was a further ground for acceding to this application in the terms of s. 1 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, the material part of which provided: "... on the death of any person after the commencement of this Act all causes of action ... vested in him shall survive ... for the benefit of his estate." There was authority for saying that an order for the payment of costs which had not proceeded to taxation was a cause of action within this section. Accordingly, an order would be made that the order for costs be allowed to proceed to taxation and the amount found to be due be paid to the personal representatives of the petitioner. Order accordingly.

APPEARANCES: *Victor Williams* (*Forsyte, Kerman & Phillips*); *W. Kee* (*Miller, Parris & Cornwell*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 823

WEEKLY LAW REPORTS: REFERENCES

The following page numbers apply to notes of cases published in these columns on the dates indicated:—

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"*Truth*" (*N.Z.*), *Ltd.* v. *Holloway* ..	1 W.L.R. 997
Wine Shippers (*London*), *Ltd.* v. *Bath House Syndicate, Ltd.*	1 W.L.R. 989

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(*continued on p. xviii*)

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Harrow.—P. N. DEWE & CO. See "London Suburbs" Section Established 1925

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Northwood and Pinner.—MANDLEY & SPARROW, Auctioneers, Valuers, etc., 25 Maxwell Road, Northwood. Tel. 3295/6. And branches in Hertfordshire.

Northwood and Pinner.—SWANNELL & SLY, 3 Maxwell Road, Northwood. Tel. 19. Valuers, Auctioneers, etc.

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(*continued on p. xix*)

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23rd September, 1960

Anglo-Overseas Agencies v. *Green*	3 W.L.R. 561
Close v. *Steel Company of Wales, Ltd.* ..	3 W.L.R. 401
Cotterell v. *Price*	1 W.L.R. 1097
Gladstone v. *Bower*	3 W.L.R. 575
Pearce, Duff & Co., Ltd., In re	1 W.L.R. 1014

30th September, 1960

A.-G. of Ceylon v. *Herath*	3 W.L.R. 615

7th October, 1960

Inland Revenue Commissioners v. *H. Dunning & Co.* (1946), *Ltd.*	1 W.L.R. 1106

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read First Time:—

Esso Petroleum Company Bill [H.C.] [10th November.

Public Health Bill [H.L.] [10th November.

To amend the provisions of the Public Health Act, 1936, relating to building by-laws, to make such amendments of the law relating to public health and the functions of county councils and other local authorities as are commonly made in local Acts, to amend the law relating to trade effluents and to amend section two hundred and forty-nine of the said Act of 1936.

Read Third Time:—

Cardiff Corporation Bill [H.L.] [8th November.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

Licensing Bill [H.C.] [9th November.

To amend the Licensing Act, 1953, to make further provision about the sale and supply of intoxicating liquor and about licensed premises, and for purposes connected therewith.

Read Second Time:—

Administration of Justice (Judges and Pensions) Bill [H.C.] [11th November.

British North America Bill [H.C.] [11th November.

Expiring Laws Continuance Bill [H.C.] [9th November.

Indus Basin Development Fund Bill [H.C.] [11th November.

B. Questions

Planning and Compulsory Purchase (Appeals)

The Minister of Housing and Local Government said that the average time taken to determine an appeal against a planning decision or compulsory purchase order was about six months, which was too long and which he was trying to reduce. The number of planning appeals this year was running 25 per cent. above 1959. [8th November.

Telephone Numbers of County Courts

The Attorney-General said that outside London the majority of county courts already had their telephone numbers listed in the telephone directory. Although the telephone numbers of courts in London were at present withheld, the Lord Chancellor was considering a proposal to publish them for a trial period of one year. If the proposal was put into effect, he would review the position at the end of that period. [8th November.

Maintenance Orders Act, 1958

Mr. R. A. Butler said that there was some doubt as to who should prosecute an employer who failed to notify the court where a man in respect of whom an attachment order was in force left his employ. He did not think that it would be appropriate to place the responsibility on a Government department, but he was having the question studied further. [9th November.

STATUTORY INSTRUMENTS

Act of Sederunt (Commissary Business) (Amendment), 1960. (S.I. 1960 No. 1973 (S.98).) 4d.

Brighton Corporation Water (Sompting) Order, 1960. (S.I. 1960 No. 2002.) 5d.

Census of Production (1961) (Returns and Exempted Persons) Order, 1960. (S.I. 1960 No. 1978.) 4d.

County of Lancaster (Electoral Divisions) Order, 1960. (S.I. 1960 No. 2001.) 5d.

County of Somerset (Electoral Divisions) (No. 2) Order, 1960. (S.I. 1960 No. 2004.) 5d.

Draft **Double Taxation Relief** (Air Transport Profits) (Iran) Order, 1960. 5d.

Draft Double Taxation Relief (Estate Duty) (Sweden) Order, 1960. 6d.

Draft Double Taxation Relief (Taxes on Income) (Sweden) Order, 1960. 11d.

Government Stock (Redemption) (Amendment) Regulations, 1960. (S.I. 1960 No. 1983.) 4d.

London Traffic (Parking Places) Consolidation (Amendment) (No. 2) Regulations, 1960. (S.I. 1960 No. 1979.) 5d.

London Traffic (Prescribed Routes) (Guildford) Regulations, 1960. (S.I. 1960 No. 1976.) 4d.

London Traffic (Prescribed Routes) (Southwark) (No. 3) Regulations, 1960. (S.I. 1960 No. 1977.) 4d.

Metropolitan Water Board (Superannuation) Order, 1960. (S.I. 1960 No. 1987.) 4d.

Post Office Register (Amendment) Regulations, 1960. (S.I. 1960 No. 1980.) 5d.

Post Office Register (Trustee Savings Banks) (Amendment) Regulations, 1960. (S.I. 1960 No. 1984.) 5d.

Premium Savings Bonds (Amendment) (No. 2) Regulations, 1960. (S.I. 1960 No. 1982.) 5d.

Public Health (Infectious Diseases) Amendment Regulations, 1960. (S.I. 1960 No. 1989.) 4d.

Registration of Births, Still-Births and Deaths (Statistics) (Scotland) Amendment Regulations, 1960. (S.I. 1960 No. 1990 (S.100).) 5d.

Savings Certificates (Amendment) (No. 2) Regulations, 1960. (S.I. 1960 No. 1981.) 5d.

Stopping up of Highways Orders, 1960:—

City and County of Bristol (No. 10). (S.I. 1960 No. 1991.) 5d.
County of Cumberland (No. 5). (S.I. 1960 No. 1972.) 5d.
County of Lancaster (No. 24). (S.I. 1960 No. 1992.) 5d.
County of Lancaster (No. 26). (S.I. 1960 No. 2005.) 5d.
County of Lancaster (No. 28). (S.I. 1960 No. 1996.) 5d.
County of Somerset (No. 12). (S.I. 1960 No. 1993.) 5d.
County Borough of Stockport (No. 3). (S.I. 1960 No. 1994.) 5d.
County of Worcester (No. 13). (S.I. 1960 No. 1995.) 5d.

Draft **Teachers' Superannuation** (Somaliland) (Revocation) Scheme, 1960. 4d.

Town and Country Planning (County of Denbigh) Development Order, 1960. (S.I. 1960 No. 1997.) 6d.

Town and Country Planning (Use Classes) (Scotland) Amendment Order, 1960. (S.I. 1960 No. 2014 (S.102).) 5d.

Trustee Savings Banks Life Annuity (Amendment) Regulations, 1960. (S.I. 1960 No. 1985.) 5d.

Wages Regulation (Boot and Floor Polish) Order, 1960. (S.I. 1960 No. 1986.) 5d.

Zetland County Council (Loch of Ustaness, Whiteness and Springs at Heglibister, Weisdale) Water Order, 1960. (S.I. 1960 No. 2013 (S.101).) 5d.

REVIEWS

Snell's Principles of Equity. Twenty-fifth Edition. By R. E. MEGARRY, Q.C., M.A., LL.D., of Lincoln's Inn, and P. V. BAKER, B.C.L., M.A., of Lincoln's Inn, Barrister-at-Law. pp. cxxxv and (with Index) 642. £2 10s. net.

Now in its twenty-fifth edition, this work requires no introduction to any legal practitioner. Most lawyers will have first met "Snell" in their student days and many would not wish to be without a copy conveniently available during their working lives. The new edition, by the same authors as its immediate predecessor of 1954, maintains the high standards of clarity and comprehensiveness which readers have come to expect.

Principal changes are the omission of the sections on partnership and adoption; and substantial cutting of the section covering persons of unsound mind rightly made in view of the passing of the Mental Health Act, 1959. In addition to that Act, notice has been taken of such recent enactments as the Charities Act, 1960, the Recreational Charities Act, 1958, the Variation of Trusts Act, 1958, the Administration of Justice Act, 1956, and the County Courts Act, 1959. In the final chapter on Equitable Remedies, the part on Rectification has been rewritten and expanded and a useful new section on Receivers has been added. Many passages in the book have been rewritten and some expanded, both to good effect, but the editors have managed to prevent the length of the new edition exceeding that of the twenty-fourth edition by more than twelve pages. Altogether the editors have more than fulfilled their obligation to readers and will not need to call in aid the eleventh maxim of equity (as set out on p. 24).

Taswell-Langmead's English Constitutional History, from the Teutonic Conquest to the Present Time. Eleventh Edition. By THEODORE F. T. PLUCKNETT, M.A., London, LL.B., M.A., Litt.D., Cambridge, F.B.A. pp. xx and (with Index) 733. 1960. London: Sweet & Maxwell, Ltd. £2 7s. 6d. net.

The first edition of this book appeared in 1875, and since then it has passed through the hands of five editors. The book covers 1,000 years of English constitutional history, and was perhaps intended originally for the historian rather than the lawyer. In the present edition Professor Plucknett has brought the text up to date, mainly by inserting references to recent literature on matters dealt with in the text. The publishers are fortunate in having such a distinguished editor to give a further lease of life to the book, by making it safe for the reader to rely on the fact that the text contains no statements which have been disproved by modern scholarship since 1875.

Though the editor has reduced the amount of detail in the last chapter on "Local Government and Social Services," and omitted the chapter on "Constitutional Laws of the Commonwealth," the book still contains a mass of detail in over 700 pages, which is probably too much for the average law student preparing for a professional examination. But it can safely be recommended to the ambitious student as a readable book, and to the practitioner as an authoritative work for reference. Its value for the lawyer lies in the fact that a proper understanding of modern constitutional law demands careful study of constitutional history.

Double Taxation. A Treatise on the Subject of Double Taxation Relief. By C. E. GARLAND, of the Middle Temple, Barrister-at-Law, and PERCY F. HUGHES. pp. (with Index) 213. 1960. London: Taxation Publishing Company, Ltd. £1 10s. net.

There can only be a small number of specialist solicitors who are regularly concerned with this mysterious branch of income tax practice, but in spite of this we cannot pass this book by without a warm recommendation to any whom it might interest. It is not confined to the main topics of treaty relief and unilateral relief, but covers all the situations in which the tax laws of another country can impinge on our own; in particular there is a chapter on the overseas trade corporation introduced by the Finance Act, 1957.

As well as packing an enormous amount of information into a small space, the book contains a number of examples and the Appendices give a guide through the maze of the Double Taxation Agreements. It is a slight pity that Appendix III has been printed before Appendix II in order to save an extra page.

The Hamlyn Lectures: The Common Law in India. By M. C. SETALVAD, Padma Vibhufhan, Attorney-General of India. Published under the auspices of The Hamlyn Trust. pp. viii and 227. 1960. London: Stevens & Sons, Ltd. £1 1s. net.

This book contains the twelfth series of Hamlyn lectures, delivered last month at Lincoln's Inn by the Attorney-General of India. Anyone interested in comparative law in general, and in the application and development of English law in very different conditions from those prevailing at home in particular, will be interested to read what Mr. M. C. Setalvad had to say. He compared the basic principles of the public and private law of England with the Anglo-Indian system of laws and administration of justice into which the former have grown since the East India Company commenced trading in India in the seventeenth century and applied English law to British subjects in small areas in India known as the company's factories. The work is divided into four chapters covering the rise of the common law, civil law, criminal law and the Indian Constitution.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Legal Effect of Manufacturers' Guarantees

Sir,—In his letter Mr. Oerton welcomes the article by Mr. Kenneth Rees but questions two points, on both of which I think that Mr. Rees' attitude was correct.

The first question is whether the act of purchasing can be sufficient consideration for a promise made by the manufacturer. Mr. Oerton suggests that it is consideration for the purchaser's contract with the retailer and for that alone, but there is no reason why the same act should not constitute consideration for any number of separate contracts with different people. A promise to marry is good consideration for a promise of settlement, whether the settlor is the intended spouse or the intended mother-in-law.

The second point concerns Mr. Rees' fear that a purchaser may find himself stripped of his common-law rights as a result of an agreement between him and the manufacturer. Mr. Oerton assumes that the reference is primarily to rights under the Sale of Goods Act, and points out that these would only avail against the retailer in any case. But surely Mr. Rees had in mind the considerable remedies in tort which a purchaser may have against the manufacturer under the decision in *Donoghue* v. *Stevenson* and the cases which have followed it.

London, W.C.2. PHILIP LAWTON.

New Examination Scheme

Sir,—It is with great concern that I await the decision of The Law Society with regard to the proposed examination scheme.

Having passed the Trust Accounts and Book-keeping portion of the Intermediate Examination in March, 1960, I then proceeded to study with due diligence for the "Final," which I am due to take in March, 1963, only to be somewhat thwarted by the announcement in the September issue of the *Law Society's Gazette* that the entire examination system is to be changed.

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Leeds.—SPENCER, SON & GILPIN, Chartered Surveyor 2 Wormald Row, Leeds, 2. Tel. 3-0171/2.

Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street, Tel. 30429.

Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

I feel that there must be many in the same position as myself and I am sure I speak for articled clerks as a whole when I urge The Law Society to make definite whatever proposals they intend to introduce as soon as possible and so ensure that studying time (almost six months already in my case) is not lost.

ANTHONY H. HAMER.

Thornton Cleveleys,
Lancs.

Awkward Frontagers

Sir,—Mr. J. F. Garner's article on private street works proceedings (p. 881, *ante*) is of great help, but he does not appear to have considered the point that some frontagers may object to adoption for the reason only that they merely *want* to keep their road a private one.

T. WELDON THOMSON & Co.

Tewkesbury,
Glos.

[*Our contributor writes:* Usually where the majority of frontagers do not want their private street to be made up, the local authority can be persuaded quite easily not to undertake the works, unless perhaps there are special reasons, e.g., where the private street provides a means of communication with a new housing estate. However, the wishes of the frontagers are not specifically made a ground for objection under the code of 1892, and the magistrates could quash a provisional apportionment on that ground only if it can be shown to be unreasonable that the works should be undertaken at all (as, e.g., in *Southgate Corporation* v. *Park Estates* [1954] 1 Q.B. 359, cited in my article). A local authority may make up under the code even a private road over which the public have no rights at all: *Taylor* v. *Oldham Corporation* (1876), 4 Ch. D. 395.]

Consequential Amendment

Sir,—In view of the recent decision at the Old Bailey in the case of "Lady Chatterley's Lover," would it not be advisable to alter Precedent 19 on p. 174 of vol. I of the Encyclopædia of Forms and Precedents?

N. F. BARROW.

London, S.W.13.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Estate Duty—DEDUCTION OF STATUTE-BARRED DEBTS—WHETHER DEBTS STATUTE-BARRED

Q. In 1948, Mrs. *X*, a widow, borrowed from each of her five children the sum of £1,000 to enable her to purchase some property. No receipt or other form of document passed between the mother and the children, but the mother promised verbally to repay the loans when she eventually sold the property. In 1956 the mother sold the property but did not repay the loans or any part thereof, and the children did not press. Again no documents passed. The mother died in 1958 and made no reference in her will to the debts to her children. She in fact left the residue of her estate to some, but not all, of her children. The executors wish to repay the loans to the five children, in spite of their being statute-barred, and they wish to schedule the £5,000 as debts due from the deceased's estate for estate duty purposes. Is there any authority for the executors' contention that they are entitled to reduce the deceased's estate for estate duty purposes by the amount of the loans?

A. First, statute-barred debts which executors may properly pay (see *Norton* v. *Frecker* (1737), 1 Atk. 524) are, in practice, allowable deductions in determining the value of the estate for estate duty purposes, provided actually paid and otherwise allowable. Other than practice, we know of no direct authority for this, but would refer you to the statement of the position in Hanson's Death Duties, 10th ed., p. 85, para. 167, in Dymond's Death Duties, 13th ed., p. 563, or in Green's Death Duties, 4th ed., p. 430. Note that the inclusion of a statute-barred debt in the Inland Revenue affidavit is not an acknowledgment by the executors which will start time running again: *Re Browning-Hanbury* [1943] 1 All E.R. 48. Secondly, we assume that your statement that the loans are statute-barred is based on facts not given. On the facts given, it would appear that repayment of the loans was not due until sale of the property, such sale being a condition precedent: see *Atkinson* v. *Bradford B.S.* (1890), 25 Q.B.D. 377. If so, the cause of action accrued in 1956 and is not yet statute-barred, the period being six years: s. 2 (1) (*a*) of the Limitation Act, 1939.

Estate Duty—INTENDED GIFT INTER VIVOS—WHETHER EFFECTIVE

Q. A testator, by his will, appointed his wife, daughter and brother to be the executors. Except for a legacy to each of his daughters he devised and bequeathed the whole of his estate to his wife. He died in September, 1959. It has now been ascertained that the legal estate in two properties were vested in the deceased at the date of his death, although the widow instructs us that these properties were given to her by the deceased many years ago, and she has produced her bank statements, which show that she has been in receipt of the rents from the properties and has paid all the outgoings in respect thereof at least since 1946. Notwithstanding this, however, the deceased never conveyed the properties to her and on his death the legal estates were still vested in the deceased. The question arises whether the properties referred to are "property passing on the death of the deceased" and should be included in the Inland Revenue affidavit and be liable to duty. The widow is of the opinion that the properties are hers and not liable to duty, and should not be disclosed. Notwithstanding this, we ourselves are under the impression that as solicitors we have a duty to disclose the facts to the Estate Duty Office.

A. We do not doubt that many years ago it was the intention of the deceased to give the properties to his wife. We do not doubt that, under the mistaken impression that he had done so, she received the rents and paid all the outgoings. But it does not seem to us that the deceased did give the properties to his wife, either in law or in equity. He did not convey the legal estate to her, so that the gift was not effective in law; there is no evidence that he ever expressly declared himself a trustee of the properties for his wife, so that the gift was not effective in equity. Furthermore, it is very well settled that equity will not intervene to perfect an ineffective gift by construing it as a declaration of trust: see *Milroy* v. *Lord* (1862), 4 De G.F. & J. 264, per Turner, L.J., at p. 274. In our opinion, therefore, unless it is possible to show that the deceased expressly declared himself to be a trustee of the properties for his wife, those properties are charged with estate duty, no effective gift of them ever having been made.

Criminal Law—ASSAULT—PROSECUTION BY POLICE—WHETHER PERSON AGGRIEVED ESTOPPED FROM TAKING CIVIL PROCEEDINGS

Q. A was assaulted by three persons, who subsequently were prosecuted by the police for malicious wounding and convicted, one being placed on probation, the other two being fined. *A* was not in fact the complainant, and this being so, can he now bring proceedings in the county court for damages against the three persons who assaulted him? Section 45 of the Offences against the Person Act, 1861, provides that any person against whom complaint is preferred "by or on the behalf of the party aggrieved . . . having been convicted . . . shall be released from all further or other proceedings, civil or criminal, for the same cause." Sections 42, 43 and 44 all refer to a complaint preferred by or on behalf of the party aggrieved. If *A* is now estopped from civil

proceedings, the result is that the action of the police can deprive any injured person from following his civil remedy.

A. It would seem that a prosecution by the police is not a prosecution "by or on behalf of the party aggrieved" (see *Nicholson* v. *Booth and Naylor* (1888), 57 L.J.M.C. 43, especially the submissions of counsel for the appellant and the judgment of Hawkins, J.; cf. *Pickering* v. *Willoughby* [1907] 2 K.B. 296), and therefore that *A* is not estopped from taking civil proceedings against the persons who assaulted him. See also Clerk and Lindsell on Torts, 11th ed., pp. 245–7.

Town and Country Planning—Enforcement Notice of No Effect Pending Final Determination of Appeal

Q. *G* receives an enforcement notice and appeals to the magistrates under s. 23 (4) of the Town and Country Planning Act, 1947, on the ground that no permission is required. The magistrates dismiss the appeal. They are asked, under the proviso to s. 23 (4), to direct that the enforcement notice shall not come into force for a further twenty-one days, but refuse to make any such direction. Five days after the dismissal of his appeal, *G* gives notice of appeal to quarter sessions under s. 23 (5). Is the enforcement notice of no effect between the dismissal of the first appeal to the justices and the date of the hearing of the second appeal to quarter sessions, so as to make it impossible for the planning authority to take criminal proceedings for disobedience of the enforcement notice until such time as quarter sessions has given its decision?

A. Section 23 (3), proviso (*b*), of the Town and Country Planning Act, 1947, provides that, if an appeal is made to the court, the notice shall be of no effect pending the *final* determination or withdrawal of the appeal. This must, in our opinion, mean that where there is an appeal from the magistrates' court to quarter sessions the notice will not take effect before the decision of quarter sessions. Therefore before this decision no prosecution can be maintained under s. 24 of the Act.

NOTES AND NEWS

Honours and Appointments

Mr. Salako Ambrosius Benka-Coker, puisne judge, Sierra Leone, has been appointed Chief Justice in that territory.

Mr. Theobald Richard Fitzwalter Butler and Mr. Oswell Searight Macleay have been appointed Deputy Chairmen of the Court of Quarter Sessions of the County of Middlesex.

Mr. John Robertson Dunn Crichton, Q.C., has been appointed Recorder of Manchester.

Sir James Holmes Henry, Bt., M.C., and Mr. William Temple have been appointed members of the Foreign Compensation Commission for two years from 1st December, 1960, and 7th November, 1960, respectively.

The following appointments are announced by the Colonial Office: Mr. M. L. Dunlap, Crown Counsel, Kenya, to be Deputy Legal Draftsman, Kenya; Mr. I. M. Evans, Resident Magistrate, Northern Rhodesia, to be Senior Resident Magistrate, Northern Rhodesia; Mr. C. B. O'Beirne, Crown Counsel, Basutoland, to be Solicitor-General, Basutoland, Bechuanaland Protectorate and Swaziland; Mr. F. J. Whelan, Resident Magistrate, Northern Rhodesia, to be Senior Resident Magistrate, Northern Rhodesia; Mr. N. R. Wylie, Resident Magistrate, Uganda, to be Magistrate, Hong Kong; and Mr. R. G. Kenny to be Resident Magistrate, Tanganyika.

Wills and Bequests

Mr. Frederic Livingstone Dickson, solicitor, of Stoke-on-Trent, left £50,574 net.

Mr. Donovan Brand Smith, solicitor, of Nottingham, left £44,007 net.

Mr. Robert Ernest Tucker, of Corfe Mullen, Dorset, solicitor to the Duchy of Cornwall from 1908 to 1940, left £32,284 net.

Societies

The Central and South Middlesex Law Society held its second annual dinner and dance at the Savoy Hotel, London, on 1st November. The president, Mr. J. Anthony S. Nicholls, was in the chair. There was an attendance of two hundred and sixty members and guests. Mr. Denys T. Hicks, O.B.E., President of The Law Society, proposed the toast of "The Central and South Middlesex Law Society." He congratulated the Society upon being the first of the new societies to be officially recognised by The Law Society and informed members present that the Council of The Law Society had accepted the Society's application for representation on the London Vacancies Committee, and in future the Society would be represented on that Committee by its president. He referred to the new scheme for legal education and the need for a new attitude towards recruitment to the profession and the encouragement of the right type of applicant by payment of suitable salaries to articled clerks. The president, Mr. Nicholls, in replying said that the Society was determined to play its part with enthusiasm and distinction. The toast to the visitors and guests was proposed by Mr. R. C. Politeyan, vice-president. Sir Thomas Lund, C.B.E., Secretary of The Law Society, responded.

The Bradford Incorporated Law Society held their annual dinner at the Midland Hotel, Bradford, on 8th November. Among the guests were the deputy Lord Mayor of Bradford, Councillor Roy Taber; Sir Thomas Lund, C.B.E., Secretary of The Law Society; Mr. Gilbert Holdsworth, chairman of the Bradford City Magistrates; Mr. H. Gaunt Suddards, Assistant Recorder of Bradford; Mr. A. R. B. Priddin, Registrar of Bradford County Court; Mr. Stanley Snowden; Mr. A. Vera-Cruz; Mr. S. G. Wardley, president of the Bradford Society of Architects and Surveyors; Mr. J. P. Wood, chairman of the Institute of Bankers, Bradford and District Centre; Mr. R. Stewart Newiss, president of the Bradford and District Auctioneers' and Estate Agents' Association; Mr. N. Greenwood, president of the Insurance Institute of Bradford; Mr. A. G. McCandlish, president of the Leeds Incorporated Law Society; Mr. R. T. Wilson, president of the Huddersfield Incorporated Law Society; Mr. F. C. Roberts, vice-president of the Halifax Incorporated Law Society; Mr. G. W. K. Butcher, vice-president of the Keighley and Craven Law Society; and Mr. J. P. McCaul, secretary of the Bradford Law Students' Society.

At the monthly meeting of the board of directors of the Solicitors' Benevolent Association held on 26th October, 1960, Mr. B. S. Pell, of London, was elected honorary treasurer of the Association in succession to the late Mr. Charles H. Culross. Mr. Philip Roland Cash, LL.M., of Derby, was elected a member of the board of directors. Eight solicitors were admitted as members of the Association, bringing the total membership up to 9,083. Fifteen applications for relief were considered, and grants totalling £1,612 were made, £65 of which was in respect of "special" grants for holidays, clothing, etc. Forms of application for membership and general information leaflets will gladly be supplied on request to the Association's Offices, Clifford's Inn, Fleet Street, London, E.C.4. The minimum annual subscription is £1 1s. and a donation of £21 constitutes life membership.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
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12s. for 30 words. Additional lines 2s. Box Registration Fee 1s. 6d. extra

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PUBLIC NOTICES

AMENDED ADVERTISEMENT

BOROUGH OF SLOUGH

ASSISTANT SOLICITOR—GRADE A.P.T.V.

Applications, stating age, qualifications, experience, previous appointments, etc., naming two referees and disclosing any relationship to members or senior officers of the Council, from solicitors preferably with experience in local government legal work including conveyancing and advocacy and committee attendance, should be sent to the Town Clerk, Town Hall, Slough, Bucks, by 5th December, 1960.

Salary within Grade A.P.T.V. (£1,310–£1,480). No council housing accommodation. The National Conditions of Service and Superannuation Acts will apply and a medical examination will be necessary.

WARWICKSHIRE MAGISTRATES' COURTS COMMITTEE

RUGBY PETTY SESSIONAL DIVISION

APPOINTMENT OF PART-TIME CLERK TO THE JUSTICES

Applications are invited from barristers-at-law or solicitors qualified under s. 20 of the Justices of the Peace Act, 1949, for the part-time appointment of Clerk to the Justices of the Rugby Petty Sessional Division, which has an estimated population of 67,000.

The personal salary will be £1,270–£1,570 per annum. Clerical staff will be provided and office accommodation will either be provided or will be by arrangement with the person appointed. The appointment is a superannuable one, but in a temporary capacity and is subject to the Conditions of Service laid down by the Joint Negotiating Committee for Justices' Clerks. It will be terminable by three months' notice on either side. The successful candidate will be required to pass a medical examination and to take up the appointment on the 1st April, 1961.

Applications, on forms to be obtained from the undersigned, must be received not later than the 10th December, 1960.

L. EDGAR STEPHENS,
Clerk of the Committee.

Shire Hall,
Warwick.
14th November, 1960.

CITY OF LEEDS

TOWN CLERK'S OFFICE

UNADMITTED LEGAL ASSISTANT

Applications are invited for the above permanent appointment. Salary within range £815–£960 according to experience. Previous local government experience is not absolutely necessary. The successful applicant will be required to perform duties for which a sound practical experience in conveyancing is essential.

Applications, stating age, education, experience, previous appointments held, together with the names of two referees to the Town Clerk, Civic Hall, Leeds, 1, not later than Monday, 28th November, 1960.

CIVIL SERVICE COMMISSION

SENIOR LEGAL ASSISTANT, COLONIAL OFFICE

Pensionable post in London for barrister or solicitor (man or woman) called or admitted in England; age at least 30 on 1st November, 1960. Candidates must have sound knowledge of the constitutional law of the Commonwealth (especially of the colonies), and must be experienced legislative draftsmen. The duties involve drafting constitutions for colonial territories and advising at constitutional conferences; previous experience is desirable. Salary scale £2,010–£2,700. Starting pay may be above minimum. Promotion prospects. Write Civil Service Commission, Burlington Gardens, London, W.1, for application form, quoting 5232/60. Closing date 30th December, 1960.

MIDDLESEX MAGISTRATES' COURT COMMITTEE

Applications invited from barristers or solicitors for the whole-time post of DEPUTY CLERK TO THE JUSTICES, Uxbridge Division. Experience in a Justices' Clerk's Office essential. Salary grade "N" £1,630–£1,865 per annum. Pensionable. Full particulars and two referees to The Clerk to the Magistrates' Courts Committee, Guildhall, Westminster, S.W.1, by 5th December. (Quote E.778 S.J.)

BOROUGH OF EALING

LEGAL CLERK required, mainly for conveyancing. Salary scale £855–£1,000 p.a. (£15 less if under 26).

Further particulars and application forms, returnable by 28th November, 1960, from Town Clerk, Town Hall, Ealing, W.5.

COUNTY BOROUGH OF CHESTER

SOLICITOR required for general legal and administrative work and advocacy. Salary within Grade A.P.T. III/IV (£960–£1,310 p.a.) to be fixed according to qualifications and experience. Housing accommodation will be provided in approved case. November Finalists may apply but preference will be given to Solicitors with some experience since admission. Applications, with names of two referees, to the Town Clerk, Town Hall, Chester, by 30th November.

THE RURAL DISTRICT COUNCIL OF GODSTONE

LEGAL ASSISTANT (UNADMITTED)

Applications are invited for this appointment on Grade A.P.T. II (£815–£960 per annum).

Candidates should have a thorough knowledge and good experience of conveyancing. Local government experience is not essential.

Assistance given with housing. Post superannuable.

Applications, stating age and experience and naming two referees, should reach the undersigned by 30th November, 1960.

M. HAWORTH,
Clerk of the Council.

Council Offices,
Oxted,
Surrey.
7th November, 1960.

CITY OF BIRMINGHAM

JUNIOR ASSISTANT SOLICITOR IN THE PROSECUTING SOLICITOR'S OFFICE

Applications are invited for the above appointment from persons having experience of advocacy. Duties will comprise prosecutions on behalf of the police and such other legal work as may from time to time be assigned. Local government experience not essential. Post pensionable. Medical examination. Salary scale, Grade "B" (£1,305 × 60 (3)–£1,485) is at present under review.

Applications, quoting three persons to whom reference may be made, to be delivered to me by 30th November, 1960. Canvassing disqualifies.

T. H. PARKINSON,
Town Clerk.

Council House,
Birmingham, 1.

COUNTY BOROUGH OF WEST HAM

ASSISTANT SOLICITOR

Salary in the range £915–£1,355, according to experience and ability.

Applications will be accepted both from Solicitors experienced in advocacy, litigation and conveyancing and Solicitors recently qualified. Previous local government experience not essential, but applicants must be willing to undertake advocacy.

Applications, on form obtainable on request, must be received by first post 28th November, 1960.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

METROPOLITAN BOROUGH OF CAMBERWELL

ASSISTANT SOLICITOR

Applications invited for this appointment within salary range of £1,185 and £1,525 (Grades A.P.T. IV or V of the National Scales). Commencing salary according to experience. Local Government experience not essential but applicants should preferably have had some experience of advocacy. Application form from Town Clerk, Town Hall, Camberwell, S.E.5. Closing date Monday 28th November.

NEW SCOTLAND YARD

ASSISTANT PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. (Salary (men) on appointment £950 to £1,135 according to age; on confirmation £1,300 at age 30, rising to £1,850. Non-contributory pension. Candidates who have passed their final examination but have not yet been admitted will be considered. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

APPOINTMENTS VACANT

FRERE CHOLMELEY & NICHOLSONS have vacancy for unadmitted Conveyancing Managing Clerk. Salary according to experience. Luncheon vouchers and Pension Scheme.—Phone HOL. 7878.

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continued on p. xxii

★ Classified Advertisements ★

continued from p. xxi

APPOINTMENTS VACANT—*continued*

CONVEYANCING Clerk required by established West End firm. Excellent prospects for keen, self reliant and knowledgeable man or woman seeking advancement. No Saturdays. Salary according to services offered. Write in confidence with details.—Box 6770, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require experienced Probate and Trusts Managing Clerk. Salary commensurate with experience. Full details, including age, experience and salary required to Box 7166, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

HOLBORN Solicitors require experienced Conveyancing Managing Clerk or Conveyancing Solicitor to work with little supervision. Salary by arrangement according to experience. But not less than £1,000 p.a.—Box 7167, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GROUP OF MERCHANT COMPANIES have vacancy on the Commercial side for widely experienced Managing Clerk interested in leaving the Law. Duties include general correspondence, Agency Agreements, Leases, work generally applicable to commercial activities. W.1 area.—State experience and salary required to Secretary, Box 7168, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required in January, 1961, by busy W.C. firm with general and international practice to conduct litigation, conveyancing and probate work. Good prospects.—Box 7169, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOMERSET.—Assistant Solicitor with experience of Litigation and interest in Advocacy required. Good opportunity to gain experience in all branches. Salary according to qualifications and ability.—Box 7170, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END firm requires assistant in Probate Department. Excellent opportunity for advancement. Salary commensurate with services offered. Write with details.—Box 7018, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING.—Large London firm require Assistant Solicitor or Conveyancing Managing Clerk with wide experience of conveyancing, particularly with company background. A top rate salary, which will not be less than £1,500, will be paid to the chosen applicant of the right age, background and experience.—Box 6956, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS' Conveyancing Managing Clerk required by North Herts Branch Office of well-known London firm. Commencing salary £1,200 for fully experienced man; good prospects of further advancement. Assistance with house purchase if required.—Box 7171, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON Insurance Company requires Assistant Solicitor under 35 years for its Legal Department. Good salary and excellent prospects. Work is varied but mainly conveyancing and company matters. Pension scheme and house purchase facilities.—Box 7179, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require Probate Clerk capable of working with minimum supervision. Salary £1,500, luncheon vouchers and Group Pension Scheme.—Apply Box 7172, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BROMLEY (Kent) Solicitors with expanding practice require Conveyancing or Conveyancing and Probate Managing Clerk.—Box 7023, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

REQUIRED S.E. London.—Experienced Conveyancing and Probate Clerk able to work with little or no supervision. Generous salary dependent upon age and experience.—Write Box 7177, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTHUMBERLAND.—Assistant Solicitor or unadmitted Managing Clerk required in old-established country firm. Mainly probate and conveyancing.—Box 7178, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTHSEA Solicitors require immediately admitted or unadmitted experienced Assistant for General Conveyancing. Salary by arrangement. Good prospects. Pension scheme.—Box 7180, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required in steadily expanding suburban practice. Must be able to deal with considerable volume of work. Please write stating age, experience and salary required.—Howard G. Thomas, 373 Norwood Road, S.E.27.

EXPERIENCED Probate Clerk, age 25–45, with wide and extensive knowledge of trust administration and preparation of full Accounts. Salary by arrangement according to experience and qualifications, but commencing in region of £1,250. Pension and Life Insurance Fund. Assistance with housing and moving expenses. South-west Midlands Area.—Box 7173, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST RIDING.—Solicitor not over 35, sought by busy practice with view to early partnership. Must be capable, ambitious and able to handle large volume of work; full share would be taken up in two stages; will yield about £4,000 p.a. First-class men only should apply with full details of qualifications and experience.—Box 7174, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

COUNTRY Solicitors South of Manchester require Assistant Solicitor to set up and take complete control of a litigation department. A newly admitted man would be suitable. Excellent starting salary and prospects of a partnership without capital being needed after satisfactory two year period.—Box 7117, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OLD-ESTABLISHED Tunbridge Wells solicitors require Managing Clerk experienced principally in conveyancing and/or probate. Salary by arrangement. Write stating age and experience.—Box 7140, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk required in Common Law Department by East Midlands Solicitors. Salary up to £1,000 according to experience. Modern Offices, Pension scheme, assistance with accommodation if necessary.—Box 7161, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

REQUIRED FOR READING OR SLOUGH

(*a*) EXPERIENCED SOLICITOR admitted at least 3 years with general experience.

(*b*) SOLICITOR to assist with conveyancing, might suit newly admitted man.

(*c*) UNADMITTED CONVEYANCING CLERK.

Salaries commensurate with experience. Pension Scheme.

WILLMETT & CO.,
35 STATION ROAD,
READING.
Tel.: READING 51948.

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SIDCUP, Kent (close by station), Conveyancing assistant required; typing essential. Salary £624 per annum.—Ring Forest Hill 0551.

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